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98TH CONGRESS } SENATE { REPORT
1st Session } { No. 98–170

THE EXPORT ADMINISTRATION ACT AMENDMENTS OF 1983

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 979

JUNE 29 (legislative day, JUNE 27), 1983.—Ordered to be printed

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98th Congress } SENATE { Report
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EXPORT ADMINISTRATION ACT AMENDMENTS OF 1983

June 29 (legislative day, June 27), 1983.—Ordered to be printed

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Mr. Heinz, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 979]

History of the Bill

Congressional dissatisfaction with export administration, both licensing and enforcement, led to efforts to strengthen the system and at the same time streamline it. A series of bills was introduced to reauthorize and improve the Act at the beginning of the 98th Congress.

On February 2, 1983, S. 397 was introduced by Senator Heinz, and S. 407 by Senators Nunn and Chiles. On February 3, 1983, Senators Garn, Proxmire, Tower, Armstrong, Mattingly, Trible, Nunn, Cohen, and eleven others introduced S. 434, the Office of Strategic Trade Act of 1983 which, among other provisions, would centralize primary responsibility for export administration within a new independent federal agency, the Office of Strategic Trade. It would also significantly strengthen the national security controls of the Act. S. 397, the Export Administration Act Amendments of 1983, would, among other things, alter foreign policy control language to increase the efficiency of such controls, alleviate unnecessary restrictions and burdens on U.S. exporters, and transfer primary responsibility for enforcement of the Act from the Commerce Department to the Customs Service. S. 407, the Export Administration Enforcement Act of 1983, would also transfer enforcement responsibilities from the Commerce Department to the Customs Service and enhance the authority of Customs agents to enforce the Act. Senator Heinz, on April 6, 1983, introduced by request S. 979, the Administration's proposal for reforming and renewing the Act. S. 979 included provisions to enhance enforcement as well as to address some of the problems associated with the administration of export controls.

The Committee on Banking, Housing, and Urban Affairs held an oversight hearing on the Commerce Department's fulfillment of its responsibilities under the Act on February 3, 1983. Witnesses testifying at this hearing were the Honorable Sam Nunn, U.S. Senator from Georgia; the Honorable William S. Cohen, U.S. Senator from Maine; the Honorable Lionel Olmer, Under Secretary for International Trade, Department of Commerce; the Honorable William von Raab, Commissioner of Customs, U.S. Customs Service; Mr. Theodore L. Thau, former official of the Commerce Department, with extensive experience in export administration; and Mr. Sherman Funk, Inspector General, Department of Commerce.

Subsequent hearings focused upon a specific area of the legislation under consideration and were conducted by the International Finance and Monetary Policy Subcommittee. National security controls were the subject of the March 2, 1983 hearing, foreign policy controls in the March 16, 1983 hearing, and administration views on foreign policy controls and their bill to amend the Act, in addition to private sector views on short supply controls, in the April 14, 1983 hearing. Witnesses testifying at these hearings are listed below:

MARCH 2, 1983

The Honorable Richard D. Perle, Assistant Secretary for International Security Policy, Department of Defense; the Honorable Lionel Olmer, Under Secretary for International Trade, Department of Commerce; the Honorable William Schneider, Under Secretary for Security Assistance, Department of State; Mr. James A. Gray, President, National Machine Tool Builders Association; Mr. Gerald Gleason, Vice President, The Foxboro Company, representing the Scientific Apparatus Makers Association; Mr. Vico Henriques, President, Computer and Business Equipment Manufacturers Association; Mr. Allen R. Frischkorn, Jr., Vice President for Government Relations, GTE Corporation, representing the Electronic Industries Association; Mr. J. A. DeRose, Program Director of Public Affairs, IBM, representing the Semiconductor Industry Association.

MARCH 16, 1983

Mr. E. C. Chapman, Executive Vice President, Caterpillar Tractor Company, representing the Business Roundtable; Mr. Larry McQuade, Senior Vice President, Corporate Administrator, W. R. Grace & Company, representing the Emergency Committee for American Trade; Mr. Bernard J. O'Keefe, Chairman and Chief Executive Officer, E. G. & G., Inc., representing the National Association of Manufacturers; Mr. Arthur T. Downey, Partner, Sutherland, Asbill & Brennan, representing the Chamber of Commerce of the United States; Mr. James H. Giffen, Chairman, New York District Export Council, Vice President for Corporate Development, Armco, Inc.; and Mr. J. W. Neely, President, Petroleum Equipment Suppliers Association, and Chairman of Smith International.

APRIL 14 1983

The Honorable Kenneth Dam, Deputy Secretary, Department of State; the Honorable Lionel Olmer, Under Secretary for International Trade, Department of Commerce; Mr. Howard Marlowe, Associate Director of the Department of Legislation, AFL-CIO; Mr. Edward L. Merrigan, Counsel, National Association of Recycling Industries, Inc.; Mr. Irving M. J. Kaplan, Vice President-Secretary Copperweld Corporation, representing the Ferrous Scrap Consumers Coalition; Mr. Steve Kaplan, First Vice President, Institute of Scrap Iron & Steel, Inc., and Treasurer, the M. S. Kaplan Company; Mr. Eugene J. Milosh, Executive Vice President, American Association of Exporters and Importers; and Mr. Richard F. Hoffman, Law Offices of George R. Tuttle.

The Committee met in open executive session on May 25, 1983. After adopting, without objection, eleven amendments to a committee print bill incorporating major provisions of S. 397, S. 407, S. 434, and S. 979, substituted the text of the committee print, as amended, in lieu of the text of S. 979 and ordered the bill S. 979 favorably reported without objection.

Explanation of the Provisions of S. 979

SCIENTIFIC AND SCHOLARLY COMMUNICATION

The Committee, aware of the vital role that scientific and scholarly communication plays in the progress of science and technology, chose to add to the Export Administration Act of 1979 a statement of national policy in support of such communication. This statement of national policy makes clear that in the administration of our export controls special care should be taken to avoid restrictions on scholarly and scientific communication except in the limited cases when overriding national security concerns must appropriately take precedence.

MULTIPLE EXPORT LICENSES

The Export Administration Act of 1979 established a new type of export license, a qualified general license, to permit multiple shipments to a particular consignee or for a specified end use. The report of the Senate Banking Committee accompanying that legislation stated, "The Committee believes the number of separate licenses required and the attendant paperwork and expense for both applicants and the Government can be greatly reduced without reducing the effectiveness of export controls, by the adoption of qualified general license requirements in place of validated license requirements whenever feasible and appropriate." In retrospect the qualified general license has not been used as widely as the Committee anticipated in 1979, but this same desire to reduce the burden of licensing has governed the Committee's deliberations this year and is the basis for several provisions of S. 979.

The Committee believes that it is more important than ever to achieve simplified and expedited export licensing procedures for appropriate transfers to Western destinations. For this purpose, the bill sets forth a general category of validated licenses authorizing multiple exports in lieu of individual validated licenses for each export transaction. Through this provision the Committee is emphasizing the importance of using bulk licenses as a means of making the licensing process more effective.

The Committee intends that as wide a use as possible be made of multiple validated licenses, in order to facilitate export trade, particularly by United States exporters that have demonstrated a sensitivity to United States national security concerns through their own effective security procedures and practices. Such use would include multiple validated licenses for exports to consignees that are not located in COCOM countries, provided that the Secretary of Commerce is confident that the diversion of controlled goods or technology is unlikely to occur.

In particular the bill identifies two multiple, or bulk, licenses that should be of special value—the distribution license and the comprehensive operations license. The Committee endorses the distribution license currently defined in regulation as an efficient and desirable licensing mechanism covering the export of goods. In addition, the Committee bill establishes a new license for Western destinations that would be suitable to facilitate the export of technology and related goods.

The essential features of the comprehensive operations license are set forth in the bill. The license would broadly cover an exporter's overseas operations within a well-defined network in the West so that shipments of critical technology and related goods within this network would not require individual export licenses. The Committee expects that the comprehensive operations license would not affect or restrict the scope of existing bulk licenses such as the distribution license.

The Committee recognizes the international scope of the U.S. high-technology industry and the desirability of utilizing existing proprietary controls on U.S. technology where such controls are adequate. Transfers of technology take place in a variety of ways, many of them quite different from the flow of goods across borders. The comprehensive operations license is intended to accommodate the special characteristics of critical technology by facilitating cooperative innovation and transfers of know-how within the international operations of U.S. firms. It will minimize administrative burdens for U.S. industry while at the same time enabling U.S. officials to focus on the most crucial aspect of the licensing process—the system of control—rather than on an overwhelming number of individual transactions. The Committee intends that the comprehensive operations license address the same questions as an individual license.

In short, this approach provides a strong incentive for U.S. firms to maintain their own controls on technology, allows the Government to concentrate its enforcement efforts more efficiently, and provides an attractive model that allied and friendly countries could adopt.

While urging as wide a use as possible of the comprehensive operations license, the Committee does not consider that its use is a right. It should be granted only after the Secretary of Commerce has made a full review of the application and determined that the use of a comprehensive operations license in lieu of an individual validated license provides sufficient safeguards against the diversion of controlled goods or technology. This should include clear evidence that the subsidiary, affiliate, or approved consignee is subject to the applicant's system of controlling the technology and related goods covered by the license. Regulations governing this license should be drawn so as to ensure that the subsidiary, affiliate, or approved consignee not disclose or transfer the technology and related goods other than pursuant to the terms of the license.

The Committee believes it is important to streamline the licensing procedures that have the effect of slowing down exporters' efforts to sell goods or technology. At the same time, the Committee wishes to stress the importance of ensuring against harm to our export control program that would weaken our domestic and international enforcement efforts and compromise our national security. The Committee, therefore, considers it essential to implement regulations to ensure effective and prompt detection of potential diversions in order to prevent the illegal transfer of goods and technology to proscribed destinations.

Thus, a clear compliance role is envisioned by the Committee in the provision requiring the Customs Service, in cooperation with the Secretary of Commerce, to audit the comprehensive operations licenses. Such audits should be sufficiently detailed to provide assurance that illegal transfers are not occurring through the granting of a comprehensive operations license.

The Committee reaffirms that in the use of the special licenses mentioned here, as is the case with all licensing procedures under section 5 of the Act, the Secretary of Commerce should exercise his authority in consultation with the Secretary of Defense and such other departments and agencies as the Secretary of Commerce considers appropriate, as provided for under section 5(a) of the Act.

FOREIGN AVAILABILITY INFORMATION: COMMERCE-DEFENSE COOPERATION

The Committee is convinced that the assessment of foreign availability could be enhanced significantly by improved cooperation between the Departments of Commerce and Defense in the gathering and assessment of information relating to foreign availability. The economic and commercial expertise of the Commerce Department and the national security and military expertise of the Department of Defense could more effectively be used together rather than in competition in analysis of foreign availability.

The Committee also notes that significant savings to the Government can be obtained through this cooperation, such as, for example, in the operation of a joint computerized data base specifically for the purpose of assessing foreign availability. In this regard, the Committee takes favorable note of the Defense Department's efforts to enhance its data base on foreign availability through its FORDTIS system and encourages the two departments to facilitate the joint operation of such a system. Impediments to such cooperation should be expeditiously resolved.

NOTIFICATION TO PUBLIC

In an effort to broaden the interaction between government and the private sector and to increase private sector input and advice into licensing policy and the licensing process, the Committee has expanded the universe of those with whom the Secretary must meet regularly to include a broad spectrum of enterprises, labor, and other citizens interested in or impacted by export controls, as well as business groups.

In addition, the Committee bill explicitly requires regular consultations by the Secretary with the advisory committees established under section 135 of the Trade Act of 1974. Those committees, which include the Advisory Committee on Trade Negotiations (ACTN) and sectoral advisory committees representing industry (ISACs), labor (LSACs), and agriculture (ASACs), are already well established entities with a record of advisory experience. It is the Committee's intent that the Secretary take advantage of the expertise of these groups through regular consultations on general export policy as well as sector-specific issues. This consultation is not intended to replace the work of the Technical Advisory Committees (TACs) provided for in section 5(h) of the Act, but rather to supplement it by providing a broader policy perspective.

EMBASSIES AND AFFILIATES OF FOREIGN COUNTRIES

The Committee is concerned by the increasing use of embassies and front organizations to circumvent national security export controls. Illegal diversion is facilitated by the operation of these foreign government-owned agencies within the United States. In the past, Customs officers have discovered the use of embassies and missions as conduits of illegal exports.

Purchases by an embassy of a country to which exports are controlled can result in a controlled item being transferred out of the country in diplomatic pouch. Several foreign government-owned companies have been directly involved in the illegal transfer of goods and technology from the United States, using their legitimate operations to gain access to controlled goods and technologies, to establish business relationships, and often to serve as a cover for illegal operations. For several years a high official of the Polish Government-owned firm Polamco, which is incorporated in Delaware and Illinois, obtained information on several U.S. defense systems through an employee of a prominent American defense contractor. Although the Polish official and the American were subsequently convicted and jailed for their involvement, Polamco was allowed to continue its operations.

In many cases a foreign government-owned agency operating within the U.S. need not physically transfer any items out of the country. The purchase of sensitive technology and its subsequent study in the United States by agents of a foreign government can be sufficient to transfer sensitive know-how to a potential adversary.

The term "affiliates" would include diplomatic officers, employees of foreign governments, and offices of foreign governments such as consulates, offices of military attaches, and permanent and temporary trade or diplomatic missions.

The provision of S. 979 amending section 5(a)(1) will increase the authority of the Government to curb these improper operations of foreign government-owned companies and affiliates and embassies.

SAFEGUARDS AGAINST DIVERSION

The Committee recognizes the difficulty in developing adequate safeguards against the diversion of controlled goods and technologies, particularly in the face of the major effort being made by the Soviet bloc to gain access to these items. Notwithstanding this difficulty, however, it is the opinion of the Committee that adequate safeguards can be developed wihin appropriate bounds, particularly in light of the various changes in enforcement that other provisions of the bill would make to current law.

It is clear that any proposed safeguard against the diversion of technology will be difficult to implement effectively. It is more possible to devise safeguards against the diversion of some goods, however. Since the last sentence of section 5(a)(3) of current law does not reflect these variations, the Committee chose to delete it from the Act.

REVIEW OF LIST OF NATIONAL SECURITY CONTROLS

Timeliness is an important element in an effective national security control system. The Committee's amendment to section 5(c)(3) reemphasizes the need for prompt and frequent review of national security controls. The Committee is aware that current COCOM practice provides for a triennial review of the multilateral COCOM control list, but it is the intent of the Committee that, to the degree possible, the annual review of U.S. national security controls include a review and updating of the COCOM list. Such annual review should have as its goal both the removal of items from the list control of which would no longer serve the purposes of the Act and the prompt inclusion on the list of items the transfer of which would pose a danger to the national security as specified in the Act.

In this regard the Committee believes that national security export controls need not, as a general rule, be imposed on a scientific or analytical instrument solely because it contains an embedded microprocessor. The Committee believes that requiring a validated license is generally inappropriate where the microprocessor's capabilities do not exceed the COCOM general exception levels established for computer devices, or if the microprocessor has been rendered non-reprogrammable for uses other than with the good being exported.

The Committee continues to believe that an assessment of foreign availability must be an essential part of this review. The Committee has also rewritten section 5(c)(3) to increase the involvement of the private sector in the process by providing for publication of notice of the beginning of each annual review and of any changes made in the Control List and the reasons therefore. The Committee reaffirms the opportunity for submission of private sector views that is provided in current law.

FORMATION OF THE MILITARILY CRITICAL TECHNOLOGIES LIST

The Committee reaffirms the need to focus national security export controls on militarily critical goods and technologies and the mechanisms through which such goods and technologies may be transferred and utilized. The provisions of current law regarding the formation of the militarily critical technologies list, however, do not take into account the full extent of our obligations under provisions of agreements made within COCOM, for example, regarding the use of otherwise non-controlled items to make operative or facilitate the use of COCOM-controlled items.

S. 979 would, therefore, amend the Act by adding a new section 5 (d)(2)(D), describing additional areas that should be given primary emphasis in the formation of the militarily critical technologies list. It is the Committee's intention that this provision be used only in furtherance of our COCOM obligations, the harmony of our multilateral export control system being a primary objective of both current law and S. 979.

The Committee also believes that, whereas foreign availability should not be given overriding consideration in the formation of the militarily critical technologies list, it should nevertheless be given primary emphasis along with the other primary factors indicated in section 5(d)(2). Therefore the Committee has explicitly added a foreign availability standard to the development of the MCTL.

In order to facilitate the use of the militarily critical technologies list, the Committee reaffirms the need to publish an unclassified version of the list in the Federal Register. Although various reasons have caused a delay in such publication, the Committee expects the Administration to comply with the statutory deadline that S. 979 would set for the publication of the list in the Federal Register not later than January 1, 1985.

INCORPORATION OF MCTL ITEMS ON THE CONTROL LIST

The Committee understands that it may not be desirable to wait for the publication of the militarily critical technologies list before incorporating items on that list into the control list. Moreover, there may arise cases where it may not be appropriate or advisable once that list is published to incorporate an item from it into the control list. The change to section 5(d)(5) made by S. 979 takes these considerations into account.

At the same time S. 979 would require that foreign availability be fully considered in the placing of an MCTL item on the control list through the same procedures as are spelled out in section 5(f) (as amended by S. 979) for considering foreign availability in the review of national security export control categories and the evaluation of specific export license requests. This shall include ample opportunity for representations and supporting evidence from exporters, advisory committees, and other interested parties, and places on the Government the burden of presenting evidence to support its determination. It also includes the requirement for the Administration to publish the determination and undertake negotiations to eliminate foreign availability where, notwithstanding its occurrence, the President determines that it would be detrimental to our national security interests not to include such an item on the control list.

REPORT OF THE SECRETARY OF DEFENSE

Current law requires the Secretary of Defense to submit an annual report to the Congress with respect to the militarily critical technologies list. The Committee chose to extend this requirement to the whole secion, dealing with national security controls. The Committee is aware that other agencies of Government fulfill various functions under section 5 of the Act, and also have other reporting requirements under the Act. The Committee expects all agencies to cooperate with each other in the preparation of the reports required under the Act.

DECONTROL OF END PRODUCTS

The Committee has also added a new paragraph (7) clarifying that the development of the MCTL and the placing of militarily critical technology and keystone equipment on the control list shall be accompanied by reductions in controls over the products of that technology and equipment. This paragraph, originally proposed by the Administration, puts into statutory form the policy objective of focusing controls on truly critical technology and not on end-products.

EXPEDITING LICENSING OF EXPORTS

The Committee believes that both national security and exporting interests of the United States can be served by the establishment of appropriate procedures expediting the licensing of exports. The Government can focus its resources more fully on preventing the transfer of sensitive goods and technology and less on procedural matters, while exporters can benefit from increased predictability and reduced delays in the administration of export controls. S. 979 amends the Act to encourage the use of the multiple export licenses described in section 4 of the Act (as amended by the bill).

As a step to reduce further the licensing burden the Committee chose to amend current law to require only a general license for the export of non-MCTL items to a country with which the United States has an agreement for the control of such exports. It is important that this decontrol of exports be compensated for by adequate multilateral restrictions under the terms of such agreement, for the Committee in proposing this amendment to current law envisions that multilateral export controls will become adequate in their effect to make the control of the export among the parties to the agreement superfluous. In this regard, this provision of S. 979, as is the case with certain other provisions, is predicated upon the provisions of the bill that are designed to result in a more effective multilateral export control system.

The Committee is also aware that this provision of S. 979 may result in some modifications to the MCTL in order to ensure that U.S. export control licensing practices are in harmony with those of our COCOM partners. Furthermore, the Committee would expect that the Secretary of Commerce would exercise his authority under section 5(e)(3) as amended by S. 979 to require a validated license only to the extent necessary to compensate for what may be inadequacies in the multilateral and bilateral control systems referred to in the provision. The Committee would hope that such trade restrictions would be relaxed as appropriate to reflect improvements in such systems, such as through an increased use of the licensing mechanisms described in section 4(a)(2) of the Act as amended by S. 979.

SPARE PARTS

In order to facilitate further the export of non-sensitive items S. 979 includes a provision to exempt the export of certain spare parts from the requirements under section 5 of the Act for an individual validated license. These must be replacement parts for items that have been already legally exported from the United States, and they must be exchanged on a one-for-one basis.

The Committee intends that this provision only apply to spare replacement parts that involve no upgrading, such as with regard to quality, reliability, or capability. The Committee understands that the control of spare parts is often an important means to deter the diversion or unauthorized use of a licensed export and believes that in selective cases in the future the Government may choose to make as part of the conditions for the initial licensing of a certain export that might otherwise be denied, a requirement that spare parts for that item be subject to an individual validated license. The Committee does not intend to preclude such requirement by this provision; but the Committee intends, however, that this requirement be included in the original license rather than be imposed after the item has already been licensed for export.

This provision, of course, would not be applicable in cases where illegal diversion is involved, as described in section 5(1) of the Act, as amended by the Committee bill.

FOREIGN AVAILABILITY: NATIONAL SECURITY CONTROLS

The Committee continues to believe that the full consideration of foreign availability is essential to an effective national security control system in order to reduce unnecessary economic burdens, assess the likely effectiveness of controls, and identify areas where greater international cooperation should be sought.

The Committee notes that in most situations the exporters themselves are in the best position to be aware of the foreign availability of controlled items, since they are knowledgeable about their competitors and the nature of the products they offer. The provisions of S. 979 governing foreign availability take note of this, requiring the Government to make a foreign availability determination which respect to particular license applications or to the modifying of the control list upon receipt of an allegation that such availability exists (or on the Secretary's own initiative), and to accept the representations that the export applicant makes, unless such representations are contradicted by reliable evidence. Thus the effective burden of proof is shifted from the applicant to the government.

However, the Committee does not intend to require that the Government accept representations as to foreign availability that are not supported by reliable evidence. In this connection the Committee expects that exporters will assist in the process of identifying foreign availability by providing as much detail as possible in their applications for an export license, or in their suggestions that a control be altered due to foreign availability.

The amendment made by S. 979 to section 5(f)(3) also includes a list of factors to be considered by the Government in making determinations regarding foreign availability. The list is not inclusive but rather illustrative of factors to be considered. Such factors are important in assessing foreign availability inasmuch as they impact on the question of whether or not an item is available in comparable quantity and of comparable quality so that the requirement for a validated license would be ineffective in achieving the purposes of the control as provided for under provisions of this section. These factors are not to be considered as a checklist of items that an applicant is expected to address in an application for an export license, however.

The Committee also acknowledges that the technical advisory committees can play an important role in indicating to the Government when a given control may be inappropriate in light of foreign availability, and believes that the provisions pertaining to the representations of license applicants should also apply to the representations of the technical advisory committees regarding the existence of foreign availability.

INDEXING

In other provisions of the Act the Committee reaffirms the policy that the control of exports for national security purposes should be modified to reflect the obsolescence of goods and technologies. The Committee believes, however, that the provision of current law providing for the indexing of license requirements should be more clearly related to the pace and nature of national defense programs and the state of the art inside the proscribed countries rather than be linked solely to Western commercial developments.

S. 979 amends the automatic nature of the indexing provision by requiring the Secretary to take into account the anticipated military needs of potential adversaries.

NEGOTIATING MANDATE FOR A STRENGTHENED COCOM

A universal theme in the Committee's deliberations over the Export Administration Act of 1979, echoed and reechoed in statements by private and Government spokesmen, has been the inadequacies of the multilateral effort to administer national security export controls. These inadequacies harm the security of all by strengthening our potential adversaries and requiring increased defense costs among the COCOM countries.

Moreover, U.S. exporters have complained that their exports have been denied because of a strict interpretation by the U.S. Government of COCOM regulations, while business has gone to a company of another COCOM member either in violation of COCOM provisions or through circumvention of the system. The Committee strongly supports the efforts of the Administration to negotiate a stronger multilateral control system and applauds the progress that has been achieved to date. But, the Committee also believes that the Congress has an important role to play in providing direction to the Government in these negotiations. S. 979 revises the negotiating mandate in the Act with regard to COCOM.

A central part of that mandate as amended by S. 979 is the objective to upgrade the COCOM agreement by according it treaty status. This step is a crucial element in the institution building necessary for a multilateral export control effort equal to the challenge presented by the Soviet bloc effort to circumvent the controls. Raising COCOM to treaty status is not an end in itself, however. It can be meaningful only in conjunction with the pursuit of the other objectives outlined in section 5(i) of the Act, as amended by the Committee bill.

COMMERCIAL AGREEMENT WITH CERTAIN COUNTRIES

S. 979 amends section 5(j) of the Act to require notification to the Secretary of Commerce of technology transfer agreements with any agency of a country to which exports are restricted for national security purposes. The Committee believes that this change in the Act will result in greater cooperation and consultation with the Government, rather than in any new controls, thereby avoiding many of the problems that have occurred in the past when such cooperation has been lacking.

With regard to paragraph (2) of section 5(j), the Committee believes that this provision as amended by S. 979 should be interpreted in light of the new policy declaration in section 3(13) made by the Committee bill.

DENIAL OF EXPORT PRIVILEGES IN CASES OF DIVERSION

The Committee chose to strengthen the provision of current law authorizing the denial of export privileges to those guilty of diversion of controlled goods or technologies. This has proven to be one of the most effective enforcement tools available to the Government, and its strength is evidence of the high importance that the Committee attaches to curbing the diversion of controlled goods and technologies to unauthorized uses. The Committee believes, however, that while strengthened, this provision of law should be used carefully, and only against those who meet the tests of knowingly diverting an item or conspiring to do so. This provision should not be applied, for example, against those who may be unknowingly or inadvertently involved in the diversion of controlled items.

NATIONAL SECURITY CONTROL AGENCY

The Committee believes that delays in the processing of license applications for national security purposes have in some degree been due to inadequate coordination and devotion of resources within the Department of Defense. The Committee recognizes and applauds the improvements that have been made in this regard and believes that further progress can be made by institutionalizing the Defense Department's export control functions under the Act within a National Security Control Agency in the office of the Under Secretary of Defense for Policy.

Whereas the directive to create a National Security Control Agency is an organizational measure and does not include authority for new resources, the Committee would urge the Secretary of Defense to request from the Congress additional resources should he consider them necessary to carry out fully his responsibilities under the Act.

EXCLUSION FOR AGRICULTURAL COMMODITIES

The Committee believes that it is inappropriate to apply national security export controls to agricultural commodities. Since such controls have been promulgated in the past, the Committee chose to amend the Act to prohibit such application.

FOREIGN POLICY IMPORT CONTROLS

Section 6(a) of the bill adds a new tool to the list of those available to the President for foreign policy trade controls. The Committee is concerned that options available to the President have been too narrowly focused on the control of U.S. origin products and technology as the sole means of gaining foreign policy leverage. Not only will the authority to control imports from countries that are the targets of foreign policy controls widen the President's options, it could also lessen the burden on American exporters, who have heretofore been asked to pay the entire price of foreign policy actions in this area.

It is the intention of the Committee that such import controls be applied only against the target of the foreign policy controls and not against friendly nations whose cooperation might be necessary to ensure the effectiveness of the controls.

CONTRACT SANCTITY

The Committee heard a great deal of testimony concerning the deleterious effects of foreign policy export controls on the American exporting community. It is persuaded by the argument that such controls—especially when they are applied so as to cut across existing contracts—have imposed significant costs in terms of lost markets as well as a reputation for unreliability for U.S. exporters. Consequently, the Committee decided to prohibit the use of Section 6 of the Act to abrogate contracts already in force at the time at which the President imposes foreign controls. Section 6, as amended by S. 979, would grant authority only for prospective export controls.

Notwithstanding the Committee's belief that the Export Administration Act should not be used to impose controls that would require the breaking of existing contracts, the Committee recognizes that in certain emergency situations such action may be appropriate. Accordingly, S. 979 would amend the International Emergency Economic Powers Act to make explicit the fact that the President has such authority under that Act. It is the Committee's intention that any such actions be taken pursuant to the provisions of that Act rather than the Export Administration Act.

CRITERIA

The Committee does not intend to render ineffective the President's authority to impose foreign policy export controls. It does, however, intend that the President be held to a stricter standard than has been the case heretofore with regard to the justification for the imposition of foreign policy export controls. It is the Committee's expectation that the new, more rigorous criteria established by S. 979 in Section 6(b) of the Act will cause the President to consider alternative means to achieving the objectives of the contemplated controls and, in general, will cause a more thorough consideration of factors such as probability of success, foreign availability of items considered for control, probable allied reaction and willingness to cooperate, and the probable costs of such controls when measured against the expected benefits.

The 1979 Act specifies that "when imposing, expanding, or extending export controls . . . the President shall consider" the criteria specified in Section 6. Nevertheless, in the case of the foreign policy controls imposed in response to the declaration of martial law in Poland, there was little evidence that these criteria were seriously considered.

Consequently, the Committee decided to amend Section 6(b) to provide that the "President may impose, expand, or extend export controls . . . only if he" makes determinations about those controls in terms of the criteria specified by Section 6(b), as amended by S. 979.

In order to emphasize further the importance of determinations under this provision, the Committee has made them a central element of the report and consultation requirements found elsewhere in Section 6 of the Act.

The Committee also notes that previous reports from the Secretary under Section 6 of the Act have contained the following sentence: "Having considered these criteria, the Secretary is not strictly bound by them." By amending Section 6(b) to change the process from one of "consideration" to one of "determination," the Committee reemphasizes the binding nature of these criteria.

CONSULTATION WITH INDUSTRY ON FOREIGN POLICY CONTROLS

The Committee is confident that the success of foreign policy export controls can be enhanced by increased consultation with those industries affected by controls, prior to their imposition. The advisory committees established under the Trade Act of 1974 can be particularly helpful in this regard, providing both expertise and confidentiality.

Foreign policy export controls in the past have often failed to correspond adequately to the realities of market and supply conditions, and have imposed unnecessary costs on U.S. producers that could have been avoided had consultations preceded the application of controls.

The Committee believes that it is far easier to modify foreign policy export controls to avoid unintended consequences prior to the imposition of controls than it is to do so after such controls have been announced, when a modification could send undesired political signals. Moreover, the Act, as amended by S. 979, would require the President to make several determinations and report on these to the Congress before foreign policy export controls are imposed. The Committee believes that prior consultations with the indicated industry representatives on these criteria, as well as on other appropriate questions, is important for a full and proper evaluation of these criteria.

NOTIFICATION TO CONGRESS REGARDING FOREIGN POLICY EXPORT CONTROLS

The Committee is dissatisfied with the degree of consultation that has been conducted by the current and past administrations with the Congress regarding the imposition, expansion, and extension of foreign policy export controls. While the requirement of the Act is that such consultation be conducted in every possible instance, the Committee notes that meaningful consultation has been the exception rather than the rule.

To reemphasize this need for consultations S. 979 would amend current law to strengthen the provisions of section 6(e). The Committee bill language would make it clear that new export controls, or the expansion or extension of existing controls, could not enter into effect until the Congress had received a report from the President containing his determinations pursuant to section 6(b) commenting on various aspects of the controls, which is essential for the Congress to fulfill its oversight role, as specified by the Act. Under no circumstances, however, should the mere submission of this report be interpreted as satisfying the President's obligations under the Act for consultations with the Congress prior to the imposition, expansion, or extension of foreign policy export controls. Consultation by definition means solicitation and consideration of Congressional views prior to making a decision.

Furthermore, the Committee intends that the requirement for consultation in the event of imposition, expansion, or extension of foreign policy export controls cover any modification of foreign policy export controls, including their removal.

The Committee has been dissatisfied with these reports in the past and intends that such report be comprehensive and detailed, not a mere paper-writing exercise. Among other things, the report should clearly demonstrate that the executive has fully considered the factors mandated in the law to be considered in the exercise of authority under section 6 of the Act and made the determinations required by section 6(b). To give emphasis to this, S. 979 would direct that a copy of the report be submitted to the General Accounting Office for the purpose of assessing the contents of the report in light of the requirements under the Act and the intent of full Congressional consultation. The report should be submitted to the GAO at the same time as it is submitted to the Houses of the Congress. This provision directs the GAO to analyze the report and its compliance with the Act. The Committee intends that the GAO subsequently report its findings to the Committees of jurisdiction in the Congress.

In light of the comprehensiveness that the Committee expects in the President's report, S. 979 would require that such report be submitted in writing more frequently than annually only when controls are newly imposed or expanded. In the event of extension without modification, such written report would only be submitted annually. When a control is extended at a six-month interval after a written report has been submitted covering that control, and the President intends to extend such control without modification, the Secretary of Commerce shall provide oral testimony, covering the points required under the Act for Presidential comment, and is not required to provide the information in a written report at that time.

EXEMPTION OF PRIVATE HUMANITARIAN ASSISTANCE ACTIVITIES

S. 979 includes a provision that exempts from future foreign policy export controls under the Act donated items intended to meet basic human needs.

This provision reflects a distinction between freely donated items of a people-to-people nature exported by U.S. individuals and private and voluntary charitable organizations, and those of a commercial or political nature, which are quite properly the subject of export controls.

The language of the provision includes an illustrative reference of the kinds of items that are intended to be covered by the stated exemption. Illustrative items include donations of medicines and medical supplies, food, clothing and shelter materials, and basic household supplies. Also included are educational supplies and various exports to enhance food production at the local level such as seeds, tools, fertilizer, small-scale irrigation pumps, and agricultural materials and machinery suited to small-scale farming operations. On the other hand, exports for large-scale projects such as dams and hydroelectric plants and other items that are not normally operated or donated by charitable agencies, would not be covered by the exemption.

S. 979 also provides that the exemption described for donated items in the case of future foreign policy export controls shall be applicable as well to existing controls.

FOREIGN AVAILABILITY

Foreign availability can be an important factor in the success, or failure, of foreign policy export controls. The Committee chose to amend Section 6 to make three important changes with respect to foreign availability. First, the test for establishing its existence has been harmonized with that established in Section 5(f) (3), as amended by S. 979.

Second, in recognition of the importance of seeking allied cooperation for foreign policy export controls, the President is directed to include a report on efforts to conclude negotiations to secure that cooperation in his reports to Congress pursuant to subsection (e).

Finally, if the President is unsuccessful in securing such cooperation within the first six months during which the controls are in effect, then the Secretary must take into account that foreign availability when making a decision on whether to grant a license under those controls. If the Secretary affirmatively determines that there is, in fact, foreign availability of such a nature so as to render the foreign policy controls ineffective in achieving their purpose, then he is directed to grant a license. He may also remove that good or technology from the control list if he determines that such action is appropriate.

The Committee, of course, recognizes that there may be cases in which the actions of the country against which controls have been instituted are of such an abhorrent nature that U.S. foreign policy controls would be appropriate despite the decisions of our allies not to cooperate. Controls against Libya, Kampuchea, Cuba, and South Africa are illustrative of such cases.

EXPORT OF LIVE HORSES BY SEA FOR SLAUGHTER

Section 7(j) of the Act prohibits the export of live horses by sea for slaughter. Section 7 provides authority to monitor and control exports in response to domestic short supply conditions. Since the provision of section 7(j) is intended for humanitarian purposes rather than in response to short supply conditions the Committee considered it appropriate to remove the provision from section 7.

The Committee's action should not be construed as an indication that the proscription of the export of live horses by sea for slaughter is in itself unwise. To the contrary, the Committee would urge the President to examine whether appropriate regulations should be promulgated to provide the same coverage in effect as that currently provided by section 7(j). It may also be advisable to continue this protection by including it in a more appropriate provision of law.

LICENSE PROCESSING TIME PERIODS

S. 979 amends section 10 of the Act by reducing by one-third the statutory time periods for the various stages involved in processing applications for export licenses. The Committee recognizes the significant strides that have been made by the Administration in reducing the turn-around time of export license applications and believes that further progress is achievable. This provision of the Committee bill is an example of the high importance that the Committee attaches to improving the efficiency of export administration. The recent steps toward incorporating computer technology in the export administration system by the Departments of Commerce and Defense are indicative of ways in which the process can be sped up without any harm to the ability of the Government to meet the objectives of export controls.

SPECIAL PROCEDURES FOR THE SECRETARY OF DEFENSE

S. 979 amends section 10(g) of the Act to clarify the role of the Secretary of Defense in the review of license applications required under section 5 of the Act. The Secretary of Defense continues to have a right to review any proposed export of goods or technology to any country to which exports are controlled for national security purposes. Specifically, the Secretary of Defense may review applications to export items to free world destinations if he determines, in consultation with the Secretary of Commerce, that the export presents a clear risk of diversion of militarily critical goods or technology to proscribed destinations and the Secretary of Commerce concurs that the Secretary of Defense shall review such applications.

The Committee does not intend that the Secretary of Defense review all free world license applications. The Committee envisions the two Secretaries agreeing upon select categories of applications that present a clear risk of diversion to a proscribed country. Moreover, the Committee believes that such evaluation should focus more on the consignee or recipient than on the country where the consignee or recipient is located.

By having advance agreement on the types of categories of licenses reviewable by the Secretary of Defense the processing of license applications should not be slowed. Disagreement between the Secretary of Defense and the Secretary of Commerce shall be elevated to the President for resolution.

CONSPIRACY AND ATTEMPTS TO VIOLATE THE ACT

S. 979 confirms that the criminal penalties provided for in the Act are available to punish attempts and conspiracies to violate the Act as well as to punish completed violations. Regulations authorized by the statute currently make attempts and conspiracy violations subject to all penalties and sanctions under the Act and are unchanged by the amendment.

This provision of S. 979 responds to the desire of prosecutors to have an explicit provision for purposes of imposing criminal penalties. Individuals who seek to carry out illegal export activity should be punished when they make the attempt to do so, even if there is no actual export, particularly when the actual export of an item may result in its diversion to a potential adversary and the frustration of U.S. export control efforts.

VIOLATIONS OF FEDERAL LAW INVOLVING EXPORTS

S. 979 would give discretionary authority to the Secretary of Commerce to prohibit persons from applying for or using an export license if they have been convicted of any criminal provision of Federal law, which violation arises from the export of goods or technology prohibited by or under the Export Administration Act of 1979. Such violation could include conspiracy or attempts to violate as well as the actual knowing participation in an illegal export. This provision could be applied, for example, against persons convicted of espionage under Title 18, United States Code, Sections 793, 794, or 198, or Title 50, United States Code, Section 783(b), or persons convicted of a violation of Section 38, the Arms Export Control Act, Title 22, United States Code, Section 2778. The Secretary also has the discretion to revoke any outstanding export license involving a person convicted of any such violation. This provision can also be applied against an organization for whom a convicted person was acting as agent in committing the violation.

The Committee believes that it is necessary and prudent to give the Secretary of Commerce, under appropriate circumstances, discretionary authority to prohibit violators of these statutes from applying for export licenses, or from holding on to any outstanding interest in the license that they possess. The Committee expects that there will be close cooperation between the Secretary of Commerce and other Federal agencies having enforcement jurisdiction over the provisions of law that would be covered by this provision. In this regard, particularly close cooperation should be maintained between the Secretary of Commerce and the Commissioner of Customs, the latter having primary responsibility for enforcement of the Export Administration Act of 1979, as amended by S. 979.

IMPORT SANCTION FOR NATIONAL SECURITY CONTROLS

One of the major thrusts of S. 979 is an increased reliance on the effectiveness of multilateral export controls. Several provisions of the bill are predicated upon increased discipline in COCOM. For this reason S. 979 provides a strengthened mandate to the President to negotiate an improved multilateral control system, including the elevation of the COCOM agreement to treaty status.

The Committee strongly believes that an ineffective multilateral export control system is a danger to the national security of the United States and other Western countries. The Committee notes and appreciates the progress that has been made within COCOM to harmonize licensing and enforcement practices.

The first objective of export controls is to prevent illegal exports, and second to provide in the event of illegal export sufficient penalties to deter any further violations. The Committee believes that such deterrence can be greatly enhanced by providing the President authority to deny a violator of national security controls, whether those controls are maintained by the United States or are maintained multilaterally, the privilege of importing items into the United States. The Committee recognizes that it is a strong and effective sanction to force a potential violator to choose between engaging in illicit trade and having access to the United States market. The Committee does not believe that the United States has any obligation to keep its markets open to those that would endanger the national security of the United States by transferring controlled goods and technology to our potential adversaries.

This provision of S. 979 would apply not only to United States persons or exports involving United States origin products, components, or technology, but to those who violate multilateral controls to which the United States is a party, whether or not United States persons or products and technology are involved. United States national security is harmed just as severely whether or not a controlled item is of United States origin or involves United States persons.

The Committee notes that the provisions of the General Agreement on Tariffs and Trade specifically exempt actions taken for national security reasons. Moreover, the Committee recognizes that the exercise by the United States of its sovereign rights to govern the flow of imports into its territory involves no extraterritorial application of United States law.

The Committee does not intend, however, that in applying this provision to regulations issued pursuant to multilateral agreements it be used to enforce anything that has not been agreed to under the provisions of such agreement. Moreover, the Committee would hope that as a general practice prior to resorting to this sanction the Government would endeavor to achieve the adequate enforcement sanctions by the appropriate member countries of the multilateral agreement, in which case the use of the import sanction provided by S. 979 may be unnecessary.

ACTIONS FOR RECOVERY OF PENALTIES

Section 11(f) of the Act provides that if an exporter fails to pay a penalty imposed pursuant to an agency proceeding and determination, the Secretary may file a civil action for recovery in a district court. S. 979 deletes a sentence that provides "In any such action, the court shall determine de novo all issues necessary to the establishment of liability".

The deletion of this sentence makes this provision consistent with other provisions of federal law, that permit a civil action for the recovery of penalties. See for example, Section 17(k) of the Occupational Safety & Health Act of 1970, (29 U.S.C. 666(k)).

In conference language on this OSHA provision, the conferees noted that:

> [this] section authorizing actions in the name of the United States for the collection of penalties should be construed narrowly and is intended to be limited to any collection process which may be necessary to actually collect the penalty.

The change in Section 11(f) is designed to remove the district court determinations, de novo, of issues relating to liability and is intended to limit district court action to any collection process that may be necessary to actually collect a penalty.

CRIMINAL FORFEITURE

S. 979 contains a criminal forfeiture provision that requires the forfeiture of goods or technology that are the subject of a national security export control violation and property that is used to facilitate the commission of such violations. The forfeiture provision also reaches the property constituting or derived from, directly or indirectly, any proceeds obtained as a result of the violation. The inclusion of a criminal forfeiture provision in the Export Administration Act gives prosecutors a powerful new weapon in the fight against the illegal export of controlled goods or technology. The history of national security control export violations has been that the violators are motivated by monetary gain. The criminal forfeiture provision, and most particularly its reaching of proceeds obtained as a result of the violation, will allow prosecutors in many cases to get back the monetary gains that violators would otherwise be able to convert into other assets and thereby shelter.

The Committee intends that the duties and authority of the courts of the United States and of the Attorney General in any criminal forfeiture action under the Act, or as regards any property that may be subject to forfeiture under the Act, be governed by the provisions of Section 1963 of Title 18, United States Code. The Committee is taking this approach so that the procedures employed under this criminal forfeiture provision are in line with those generally used in other criminal statutes.

ENFORCEMENT OF THE ACT BY THE CUSTOMS SERVICE

The Committee, taking note of the hearings held in May, 1982, by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, along with testimony provided in hearings before the Banking Committee as the Committee reviewed the Act this year, decided to place primary responsibility for enforcing the Act with the United States Customs Service. This agency is one of the traditional law enforcement agencies of the Government and has substantial resources and traditional law enforcement experience. Moreover, the resources of the Customs Service are already in place in all of the major points of exit through which illegal exports might pass.

The Committee believes that this action will ensure that competent, professional agents, trained in formal, traditional law enforcement procedures, will be assigned to investigate alleged violations of the Act, and that they will work under the supervision of executives who also have formal, traditional law enforcement backgrounds. Additionally, the entire function will exist in a high-level agency with long-time experience in and commitment to traditional law enforcement.

The Committee notes that the Customs Service already has extensive experience in the enforcement of export controls, through responsibilities that the Service has exercised in enforcing the Arms Export Control Act, and through its Operation Exodus that has enhanced the effectiveness of export controls imposed under the Export Administration Act. The Committee appreciates that Customs involvement in the enforcement of export controls dates from 1793, when President Washington, in order to prevent American involvement in the French Revolutionary Wars, issued the first proclamation of U.S. neutrality and directed its enforcement by officers of the Customs Service.

This provision of S. 979 is also a recognition of the important role that must be played by international cooperation in any successful enforcement effort. The Customs Service is in an excellent position to conduct export control investigations and inquiries abroad because the Service has foreign counterparts with whom the Service can work and relate on a day-to-day basis, as well as formal and informal agreements for such cooperation. The Custom Service also has established foreign offices with a staff of experienced investigators and has conducted export control investigations and inquiries abroad since before 1900.

The Committee commends the Commerce Department for the efforts that have been made during the past two years to improve enforcement. The Committee doubts the wisdom, however, of duplicating an operation that is already in existence and that benefits from long experience in law enforcement. The Committee believes that for the Commerce Department to do an adequate job of enforcing the Act it would need to duplicate the current Customs operations. The Department would need to add hundreds of people and make major increases in administrative staff with experience in law enforcement. Since in virtually every instance where an enlarged Commerce enforcement operation would be placed a Customs operation has already been established, the Committee believes that the wisest move to enhance enforcement of the Act is to rely on the experience and resources of the Customs Service, which are already in place and doing an effective job so far as export control enforcement has been delegated to the agency.

S. 979 amends section 12(a) to include a new subparagraph (2) that would provide that officers of the Customs Service are authorized to conduct border searches in connection with suspected exports of goods or technology. This amendment is in addition to, and not in limitation of, the authority that Customs officers already have. Although two United States Circuit Courts of Appeals have specifically held that Customs officers may conduct border searches for export shipments, the standard that applies to such searches is not clear in the remaining circuits. See *U.S.* v. *Ajlouny*, 629 F.2d 830 (2nd Cir. 1980); *U.S.* v. *Swarovski*, 557 F.2d 40 (2nd Cir. 1977), 592 F.2d 131 (2nd Cir. 1979); *U.S.* v. *Duncan*, 693 F.2d 971 (9th Cir. 1982); *U.S.* v. *Stanley*, 545 F.2d 661 (9th Cir. 1976). The purpose of the amendment is to make it clear that searches of exports may be conducted on the same basis as searches governing imports. The language would also make it clear that all articles and conveyances are subject to such searches.

Subsection (3), as provided for by S. 979, contains specific authority for warrantless arrests in connection with the enforcement of any law governing exports. This authority is in addition to any other arrest authority presently given to Customs officers. Although Customs officers presently make warrantless arrests for export violations, as well as for violations of other laws delegated to Customs for enforcement, *U.S.* v. *Swarovski*, 557 F.2d 40 (2nd Cir. 1977) held that such arrests were to be determined by the standards set forth in the various state laws since Congress had not given Customs officers specific Federal arrest authority in this area. The purpose of this amendment is to create uniformity in the law of export arrests. Having to depend on 50 different state laws creates inefficiency and confusion in this area of great concern to national security. The provisions of S. 979 are intended to eliminate these problems.

The amendments made by S. 979 to section 12(c) of the Act are intended to make it clear that all information that is relevant to the enforcement of this Act should be provided to the agency having enforcement responsibilities under the Act and that the Customs Service and the heads of other departments and agencies should be consulted on a continuing basis by the Secretary of Commerce to facilitate information sharing.

FOREIGN AVAILABILITY REPORT

The Committee is dissatisfied with the progress that has been achieved to date to establish procedures within the Government for the evaluation of foreign availability. The Committee recognizes that foreign availability is a very complex factor to assess, but this complexity cannot explain the almost total lack of progress that has been made since the adoption of the Export Administration Act of 1979. The Committee further notes that the Congress since at least 1979 has always granted the Administration its full request for funds for export administration, so no argument about insufficient funds is justifiable.

It is unclear to the Committee how it can stress any more strenuously the need to establish adequate systems within the Government for the assessment of foreign availability than is already expressed in current law. In order to enhance the role of Congressional oversight on this matter, the Committee decided that it was prudent to require the Secretary of Commerce and the Secretary of Defense to provide the Congressional Committees of jurisdiction with a joint quarterly report on the operation of and improvements in the Government's ability to assess foreign availability.

UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION

As a result of hearings held on the Act, the Committee made it a priority in its consideration of the Act to raise the priority and visibility within the Government of export administration. Currently, to find an official whose responsibilities are confined exclusively to export administration one could go no higher than a Deputy Assistant Secretary of Commerce.

The Committee believes that export administration has a far-reaching effect on the national security, foreign policy, and economic strength of the country. For that reason, the Committee considers it essential that the responsibility for export administration be raised at least to the Under Secretary level. Such Under Secretary should have no other responsibilities assigned to him than those associated with export administration. Particularly important in this regard, the Under Secretary should be shielded from responsibilities for the promotion of exports, where at the very least there would exist the appearance of a conflict of interests. The Committee intends that this Under Secretary for Export Administration be the spokesman within the Government for export administration. With this change, the Under Secretary of Commerce for International Trade would no longer exercise any responsibilities under the Act.

The Committee would expect that sufficient resources, including appropriate organizational changes, would be devoted to export administration under the new Under Secretary. This would include establishment of appropriate Assistant Secretary positions reporting to the new Under Secretary.

DEFINITION OF TECHNOLOGY

S. 979 amends the definition of technology as used in the Act. The Committee intends that the definition be sufficiently broad so as to cover all forms of technology as well as the means by which the technology may be transferred or utilized.

EXPORT OF GOODS AND EXPORT OF TECHNOLOGY

The definitions made by S. 979 in section 16 of the Act, defining the terms "export of goods," and "export of technology," also comprehend the reexport of these items.

OFFICE OF STRATEGIC TRADE

One of the principal bills that the Committee considered in its review of the Export Administration Act was S. 434, which among other things would establish an Office of Strategic Trade, within which the export administration functions of the Government would be coordinated. Although the Committee found considerable merit in this proposal, the Committee decided to delay action on this step until after receiving information from the administration concerning how such an office could be established.

S. 979, therefore, contains a provision requiring the President to submit a plan for establishing such an office. The Committee desires that the plan be fully detailed as if the Congress had decided to establish such an office and were requesting Administration advice on how it could be effectively established. Such report should be drafted without regard to the Administration's support, or lack thereof, for the creation of such an office.

AMENDMENT TO THE INTERNATIONAL EMERGENCY

ECONOMIC POWERS ACT

The Committee believes that the International Emergency Economic Powers Act is the appropriate statute to apply if a situation of such gravity develops that, in the judgment of the President, the national interest demands the breaking of contracts between United States firms or their affiliates and consignees abroad.

While the Committee contemplates that the President would declare a national emergency pursuant to the International Emergency Economic Powers Act in such circumstances, it also recognizes that such action implies a somewhat broader concept of "emergency" than may heretofore have been the case. The Committee accepts that implication, since it has, in its amendments to section 6 of the Export Administration Act, precluded such severe action under that statute.

The amendment made to the IEEPA by S. 979 is intended to reaffirm that such action is comprehended by that statute.

AUTHORIZATION OF APPROPRIATIONS

The Committee recognizes that S. 979 includes several changes to export administration that were not contemplated by the Administration in its budgetary request for funds for the purposes of the Act. Although S. 979 includes the full budget request by the Administration, the Committee hopes that the Administration would request additional funds for the fiscal years authorized should the changes made by S. 979 make them necessary.

Section-by-Section Analysis

TITLE

Section 1 would provide that the bill may be cited as the "Export Administration Act Amendments of 1983."

FINDINGS

Section 2(1) would make a syntactic change in Section 2(6) of the Export Administration Act of 1979.

Section 2(2) would add a new finding to section 2 of the Act that the transfer of national security sensitive technology to the Soviet Union has led to significant gains in their military industrial capabilities creating a threat to U.S. and allied security and increasing the U.S. defense budget.

DECLARATION OF POLICY

Section 3(1) amends section 3(3) of the Act concerning the U.S. policy of encouraging multilateral cooperation on export control policy, by adding those countries where we share "common strategic objectives" to present law, which includes only countries with which we have defense treaties.

Section 3(2) amends section 3(7) of the Act by adding a requirement for "prompt" efforts by the President to negotiate the removal of other countries' restrictions on their supplies where these are harmful to the U.S. It would also make a syntactic change to present law.

Section 3(3) amends section 3(8) of the Act by adding a requirement for "prompt" efforts by the President to encourage other countries to inhibit international terrorism. It also makes a syntactic change to present law.

Section 3(4) amends section 3(9) of the Act, which covers U.S. policy of multilateral cooperation to restrict exports of goods and technology that would enhance the military potential of countries to the detriment of U.S. and allied security, by adding those countries where the U.S. shares "common strategic objectives" to present law language, which includes cooperation with only those countries with which the U.S. has defense treaties.

Section 3(5) of S. 979 would add two new policy declarations to section 3 of the Act:

1. The new section 3(12) would declare U.S. policy to be to encourage the cooperation of other friendly countries in restricting exports of technology harmful to U.S. security; and
2. The new section 3(13) would declare that it is U.S. policy to sustain vigorous scientific enterprise, including the promotion of scholarly exchange.

GENERAL PROVISIONS

Section 4(1) amends section 4(a)(2) of the Act by replacing the qualified general license for multiple exports with validated licenses authorizing multiple exports, including a distribution license and a comprehensive operations license. The latter would rely heavily upon an exporter's internal proprietary controls. Customs and Commerce would audit the comprehensive operations license at least once a year. This would significantly reduce licensing time and reduce the burden on Commerce for this function.

Section 4(2) amends section 4(b) of the Act by redesignating the Commodity Control List in present law as "Control List", reflecting the fact that technologies are included in addition to goods. Instead of the present provision which requires a listing of only the goods and technologies subject to controls, the new list would contain licensing requirements for exports of goods and technologies to controlled destinations.

Section 4(3) changes section 4(c) of the Act concerning foreign availability by (1) providing the criterion of "comparable" quantities instead of present language requiring "significant" quantities available overseas to ascertain foreign availability, and (2) adding a further criterion that controls be ineffective in achieving their purposes due to the foreign availability of a good or technology.

Section 4(4) changes section 4(c) of the Act concerning foreign availability by adding the requirement of Commerce-Defense cooperation, including a jointly operated computer system for the purpose of gathering information on foreign availability.

Section 4(5) amends section 4(f) of the Act by expanding the group to be consulted regarding export control policy and foreign availability to include a broad spectrum of enterprises, labor organizations, and interested citizens. This amended section also provides for continual consultations with the advisory committees established under Section 135 of the Trade Act of 1974.

NATIONAL SECURITY CONTROLS

Section 5(1) amends section 5(a)(1) of the Act by adding presidential authority to prohibit reexports of goods or technologies and the transfer of goods or technologies of foreign embassies and affiliates in the U.S. of countries to which exports of these goods and technologies are controlled.

Section 5(2) eliminates section 5(a)(2)(B) of the Act in its entirety and places a modified version of the licensing provision in section 10(b)(3), Procedures for Processing Export License Applications.

Section 5(3) strikes out the last sentence of section 5(a)(3) of the Act requiring that regulations not be based upon the assumption that effective safeguards against diversion can be devised.

Section 5(4) amends section 5(b) of the Act by adding as a new consideration for determining U.S. export control policy toward individual countries whether the policies of a country are adverse to the U.S. national security interests.

Section 5(5) amends section 5(c)(1) of the Act by changing the reference to the commodity control list to "control list" to conform with section 4(2) of the Act as amended by S. 979. It would also amend section 5(c)(3) of the Act to require at least an annual review for all items on the control list. If further adds a new requirement of Commerce to publish a notice of each annual review in the Federal Register before the review and any revisions to the control list after the review, with an explanation of the reasons for the changes. Syntactic changes are also made to present law.

Section 5(6) adds as a new factor to those in section 5(d)(2) of the Act, which are emphasized in developing a militarily critical technologies list (MCTL), goods which would augment a process line used in the application of a militarily critical technology, or aid in the analysis of a U.S. military system and thereby assist the design of that system or the development of countermeasures to it.

Section 5(7) amends section 5(d)(2) of the Act to include the foreign availability of items as one of the primary factors to be considered in forming the MCTL.

Section 5(8) amends section 5(d)(4) of the Act to change the date established for completion and publication of the MCTL to January 1, 1985.

Section 5(9) amends section 5(d)(5) of the Act to provide that specific items on the MCTL be individually transferred to the control list instead of transferring the entire MCTL to the control list at one time. It also makes foreign availability a factor in placing an item from the MCTL on the control list.

Section 5(10) modifies section 5(d)(6) of the Act by requiring an annual report by the Secretary of Defense to Congress concerning the entire national security section instead of only the militarily critical technologies subsection.

Section 5(11) adds a new provision to section 5(d) of the Act, providing that the establishment of adequate controls on military critical technology and keystone equipment be accompanied by suitable reductions in controls over the products of that technology and equipment.

Section 5(12) amends section 5(e)(1) of the Act by replacing the qualified general license with the multiple validated export license described in section 4(a)(2) as amended by S. 979.

Section 5(13) amends section 5(e) (3) and (4) of the Act by requiring a general license instead of a multiple or individual validated license for exports to countries party to a multilateral export control agreement with the United States if the exports are restricted by such agreement. This new provision would also apply in the case of comparable bilateral agreements. In the case of items on the MCTL the Secretary of Defense may require a multiple or individual validated license.

Additionally an individual validated license could not be required for replacement parts exported on a one-for-one basis to replace those in a commodity that had been lawfully exported.

Further, section 5(13) adds a new section 5(e)(5) to the Act to provide that the Secretary of Commerce periodically review the various special licensing procedures to increase their use by reducing or eliminating unnecessary requirements.

Section 5(14) changes section 5(f)(1) of the Act by specifying that the Secretary of Defense is one of those with whom the Secretary of Commerce is to consult in assessing foreign availability with regard to the control list.

Section 5(15) amends section 5(f)(1) and (2) of the Act concerning foreign availability by providing the more appropriate criterion of "comparable" quantity and quality instead of "sufficient" quantity and quality.

Section 5(16) amends section 5(f)(3) of the Act by requiring the Secretary of Commerce to make a foreign availability determination under either paragraph (1) or (2) upon request or on his own initiative, and by requiring the Secretary to accept an applicant's written assertion, accompanied by evidence of foreign availability unless contradicted by reliable evidence. A number of specific factors that may be considered by the Secretary in foreign availability assessments are detailed in the amendment, but the list is not inclusive, nor is there a requirement that all these factors apply in all cases.

Section 5(17) adds a new paragraph to subsection 5(f) of the Act by requiring the Secretary of Commerce to assess foreign availability upon the request of the appropriate technical advisory committee, pursuant to the same procedures provided in section 5(f)(3) of the Act as amended by S. 979.

Section 5(18) amends section 5(f)(4) of the Act concerning foreign availability by requiring strengthened language such that the President will "actively pursue" negotiations to eliminate foreign availability instead of that the President "shall take steps to initiate negotiations".

Section 5(19) amends section 5(g) of the Act concerning indexing by adding that the anticipated military needs of countries to which exports are controlled for national security purposes are to be included as one criterion in indexing regulations.

Section 5(20) amends section 5(h)(1) of the Act by adding "the intelligence community" to the list of government departments and agencies that must be included in the technical advisory committees.

Section 5(21) amends section 5(h)(2) of the Act to broaden the role of technical advisory committees by adding that they are to be consulted on questions relating to actions designed to carry out national security export policy.

Section 5(22) eliminates section 5(h)(6) of the Act, which becomes redundant with the addition of the new subsection 5(f)(7) concerning this area.

Section 5(23) eliminates section 5(i)(3) of the Act, which calls for the objective of reaching an agreement on reducing the scope of

COCOM export controls to a level acceptable to and enforceable by all members of COCOM.

Section 5(24) is a conforming change that amends section 5(i)(4) of the Act by deleting the reference to an eliminated section.

Section 5(25) adds to section 5(i) of the Act new goals for presidential negotiations with COCOM members to strengthen this organization by (1) upgrading COCOM to treaty status; (2) improving the International Control List, strengthening COCOM's enforcement effort, providing it sufficient funding, and upgrading its professional staff; and (3) strengthening COCOM to increase its effectiveness in protecting the national security of all participants.

Section 5(26) amends section 5(j) of the Act by broadening the coverage of reporting requirements for commercial agreements with governments or agencies of governments of countries to which exports are controlled for national security purposes that call for the transfer of unpublished technical data to such countries. The exemption to educational institutions is continued except where the data involves a military critical technology.

Section 5(27) amends section 5(k) of the Act, which covers negotiations with other countries by emphasizing that non-COCOM countries are to be included. It adds that if agreements are reached with these countries comparable in practice to those in COCOM, then exports to them will be treated in the same manner as those destined to COCOM countries.

Section 5(28) amends section 5(l) of the Act, which covers the unauthorized diversion to military use of controlled goods or technology by broadening the threshold conditions to be met before enforcement action could be taken, and by defining the new term "diversion to an unauthorized use or consignee."

Section 5(29) would add four new subsections to section 5 of the Act, providing a new requirement that Customs, Commerce and the FBI give assistance to the private sector to develop better security measures; requiring affected government agencies to keep detailed records of licensing decisions; providing provision for the establishment of a National Security Control Agency within the Defense Department to aid the Secretary of Defense in carrying out his responsibilities for national security controls; and denying authority for national security export controls on agricultural commodities.

FOREIGN POLICY CONTROLS

Section 6(1) amends section 6(a)(1) of the Act by adding authority for the President to impose import controls when export controls for foreign policy purposes are imposed.

Section 6(2) adds to section 6(a)(1) of the Act a "contract sanctity" clause that prohibits presidential action under section 6 of the Act to impose export controls causing non-performance of a control involving U.S. exports if the contract had been signed prior to the imposition of the foreign policy export controls.

Section 6(3) amends section 6(a)(2) of the Act by reducing the duration of foreign policy controls to 6 months instead of one year.

Section 6(4) amends section 6(b) of the Act by requiring that certain criteria must be determined rather than only considered before foreign policy export controls can be imposed. Language of the new criteria is modified to reflect the "determine" format. A criterion regarding the extraterritorial effect of such controls is added. This provision clarifies that the President is bound by these criteria in the exercise of his foreign policy export control authority.

Section 6(5) amends section 6(c) of the Act by increasing the number of sources that must be consulted on the criteria in section 6(b) of the Act, as well as other appropriate matters, before imposing foreign policy export controls. Appropriate advisory committees established under section 135 of the Trade Act are included.

Section 6(6) amends section 6(e) of the Act concerning notification to Congress as follows: (1) requires that foreign policy export controls shall not enter into effect until the Congress has received the specific report from the President; (2) adds that the report must specify the purpose of the controls, the criteria determinations and their bases, whether import controls are also being applied, and if not, why not; (3) adds that the General Accounting Office would receive a copy of the report to assess its compliance with the intent of this section; and (4) provides that when extending controls, 12 month interval reports must be submitted in writing while 6 month interval reports could be presented orally to Congressional committees of jurisdiction by the Secretary.

Section 6(7) expands section 6(f) of the Act which prohibits foreign policy export controls on medicine, medical supplies, and certain food exports, to include donations of items intended to meet basic human needs. Further, such donations would be exempt from controls in effect on the enactment date of this proposed Act.

Section 6(8) amends section 6(g) of the Act by requiring that prior to each etxension of export controls the President must evaluate and report to Congress on his efforts to eliminate foreign availability during the period of the controls. If the President is unsuccessful and the Secretary of Commerce determines that foreign availability of an item exists so as to render the export controls ineffective, then the Secretary of Commerce must issue a license for that item and may remove it from the foreign policy control list. Foreign availability is to be determined in the same manner as that specified for national security controls under section 5(f)(3) of the Act as amended by S. 979.

Section 6(9) amends section 6(k) of the Act by changing the reference to the "commodity control list" to the "control list", and by clarifying that the control list will also identify countries or destinations and respective types of controls in addition to identifying goods and technologies.

SHORT SUPPLY CONTROLS

Section 7 eliminates section 7(j) of the Act, which restricts the export of live horses by sea for slaughter.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS

Section 8(1) amends section 10(h) of the Act by reducing license processing time periods provided in this section from 60 days to 40 days.

Section 8(2) amends section 10 of the Act by reducing license processing time periods provided in this section from 90 days to 60 days.

Section 8(3) amends section 10 of the Act by reducing license processing time periods provided in this section from 30 days to 20 days.

Section 8(4) amends section 10(f)(3) of the Act concerning application denial notice by further requiring that Commerce advise an applicant what modifications of the item would make it acceptable, and which Commerce personnel would be available to give this advice. This would include provisions currently found in section 5(a)(2)(B) of the Act.

Section 8(5) amends section 10(g)(1) of the Act to clarify the right of the Secretary of Defense to review applications for export licenses for purposes of national security. Under the provisions as modified by the bill the Secretary of Defense would be authorized to review any proposed export, whether by single or multiple license, to any country to which exports are controlled for national security purposes, or where the Secretary of Defense, in consultation with the Secretary of Commerce, determines that there is a clear risk of diversion of militarily critical goods or technology. Whenever the Secretary of Defense determines that such export will prove detrimental to the national security or constitutes a clear risk of diversion of militarily critical goods or technology, the Secretary of Defense shall recommend to the President that such export be disapproved.

Section 8(6) amends section 10(g)(2) of the Act to make it conform with the amendment to section 10(g)(1).

Section 8(7) amends section 10(g)(2) of the Act to provide that the Secretary of Commerce and the Secretary of Defense must concur on which licenses may be referred to the Secretary of Defense for review in order to make a recommendation to the President as provided in section 10(g)(1). Disagreements shall be referred to the President for resolution.

VIOLATIONS

Section 9(1) expands section 11(a) of the Act by including as violations of the Act attempts to violate the Act or conspiracy to do so.

Section 9(2) expands section 11(b) of the Act by including those who conspire to or attempt to violate the Act.

Section 9(3) amends section 11(b) of the Act by adding that knowledge of the destination or intended destination of controlled exports could be a factor in determining culpability.

Section 9(4) amends section 11(b) of the Act by stating that for the purposes of the subsection countries to which exports are controlled for national security purposes are defined as those identified pursuant to those provisions in the national security section of the Act.

Section 9(5) adds two new provisions to section 11 of the Act: (1) possession with the intent to export items contrary to the Act is a violation subject to penalties stipulated in this section of the Act; and (2) the Secretary of Commerce is not prevented by this subsection of the Act from defining, by regulation, violations under the Act.

Section 9(6) amends section 11(c)(1) of the Act by designating the Customs as the agency that may impose civil penalties for violations of the Act. This corresponds with other provisions of the bill transferring enforcement of the Act to the Customs Service.

Section 9(7) adds two new provisions to section 11(c) of the Act: (1) the Secretary of Commerce may revoke the authority to export of anyone convicted of a violation of any other Federal law, arising from the export of items prohibited by this Act; and (2) violators of national security controls under the Act or any regulations pursuant to a multinational agreement for national security purposes to which the United States is a member may be subject to such controls on the importing into the United States as the President may prescribe.

Section 9(8) amends to section 11(e) of the Act to make it conform with the forfeiture provision of section 11(g) as amended by the bill. Forfeited property is to be treated as a miscellaneous receipt in addition to other penalty amounts. However, forfeited property may not be refunded.

Section 9(9) deletes the provision in section 11(f) of the Act that requires courts to determine de novo all issues necessary to establishment of liability when pursuing a civil action to recover penalties.

Section 9(10) adds new provisions to section 11 of the Act that, (1) mandate forfeiture of property interests and proceeds involved in a criminal violation; (2) state that criminal forfeiture procedures are governed by section 1963 of title 18, U.S. Code; and (3) provide that, subject to the discretion of the Secretary of Commerce, no one convicted of a violation of certain Federal statutes shall be eligible to apply for and/or use an export license for up to 10 years.

Section 9(11) makes necessary conforming changes.

ENFORCEMENT

Section 10(1) is a conforming change.

Section 10(2) amends section 12(a) of the Act by giving jurisdiction to any U.S. district court to enforce subpenas under the Act.

Section 10(3) amends section 12(a) of the Act to transfer enforcement responsibility to the Customs Service.

Section 10(4) adds new provisions to section 12 of the Act giving authority to Customs officers and other authorized persons who have reasonable cause to suspect violations of any Act governing exports to, (1) search vehicles, aircraft or persons; (2) search packages or containers; (3) seize and secure for trial any goods or technology; (4) make warrantless arrests in the enforcement of any Act governing exports; and (5) refer the matter to Treasury or the Attorney General for civil or criminal action.

Section 10(5) amends section 12(c)(3) of the Act by requiring all departments or agencies to provide information relevant to the enforcement of this Act to the Customs Service.

Section 10(6) amends section 12(c)(3) of the Act by requiring that information pertaining to subjects of ongoing investigations be furnished to Customs. It further mandates that the Secretary of Commerce will consult on a continuing basis with the Attorney General, the Commissioner of Customs, and other heads of departments or agencies which obtain relevant information subject to the paragraph in order to facilitate the sharing of this information.

Section 11(1) amends section 14 of the Act by changing the title of this section to Annual and Quarterly Report to reflect the requirement of a new quarterly foreign availability report in addition to the current requirement for an annual report.

Section 11(2) adds a new subsection to section 14 of the Act that charges Commerce and Defense to jointly prepare and submit to the Congressional committees of jurisdiction a quarterly report on the state of the Government's ability to assess foreign availability.

Section 12(a) amends section 15 of the Act by changing its title to "Administrative and Regulatory Authority", to reflect the establishment of an Under Secretary of Commerce for Export Administration.

Section 12(2) is a conforming change.

Section 12(3) adds a new subsection to section 15 of the Act requiring the President to appoint an Under Secretary of Commerce for Export Administration to carry out those duties formerly performed by the Assistant Secretary of Commerce for Trade Administration and other functions as prescribed by the Secretary of Commerce.

DEFINITIONS

Section 13(1) broadens the definition of the term "technology" as contained in section 16(4) of the Act.

Section 13(2) clarifies the definition of "good" that appears in section 16(3) of the Act, to include natural or manmade substances.

Section 13(3) defines the following new terms in the Act:

1. "export of goods".
2. "export of technology".
3. "United States".

OFFICE OF STRATEGIC TRADE

Section 14 adds a new section 25 to the Act requiring the President to submit to the Congress a plan for an Office of Strategic Trade by March 15, 1984.

AMENDMENTS TO INTERNATIONAL EMERGENCY ECONOMICS POWERS ACT

Section 15 amends section 203(a)(1) of the International Emergency Economics Powers Act by clarifying that the IEEPA contains authority to control exports under specific circumstances.

AUTHORIZATION

Section 16 amends section 18 of the Act by providing $11,610,000 for each of the fiscal years 1984 and 1985.

TERMINATION DATE

Section 17 amends section 20 of the Act by extending the termination date to September 30, 1989.

AMENDMENT TO MAGNUSON ACT

Section 18 clarifies Clause (viii) of section 201(e)(1)(E) of the Magnuson Fishery Conservation and Management Act.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., June 29, 1983.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 979, the Export Administration Act Amendments of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 979.

2. Bill title: Export Administration Act Amendments of 1983.

3. Bill status: As ordered reported by the Senate Committee on Banking, Housing and Urban Affairs, May 25, 1983.

4. Bill purpose: S. 979 would amend and reauthorize the Export Administration Act of 1979. It would encourage multilateral cooperation on export control policy, and would make a number of changes in the federal administration and enforcement of export controls. Section 16 would authorize the appropriation of $11.6 million, plus such amounts as may be necessary for adjustments in pay, retirement and other benefits as provided by law, in each of the fiscal years 1984 and 1985 for export administration in the Department of Commerce (DOC).

S. 979 would establish a new position of Undersecretary of Commerce for Export Administration. It would direct the Department of Defense (DOD) to establish a National Security Control Agency within the Office of Undersecretary of Defense for Policy, and would require the President to submit a plan for establishing an Office of Strategic Trade. The bill would also create a number of new reporting requirements and require additional interagency contact, including the operation of a joint DOD and DOC computerized data base for assessing foreign availability.

The President has requested $6.6 million in fiscal year 1984 for export administration, plus $5.0 million for enforcement. S. 979 would eliminate all DOC enforcement activity, and delegate this authority to the U.S. Customs Service. Fiscal year 1983 funds presently available to DOC for export administration and assessment of foreign availability total $8.0 million.

5. Estimated cost to the Federal Government: The estimated budget impact of the funding authorized by this bill is shown in the following table.

[By fiscal years, in millions of dollars]

	1984	1985	1986	1987	1988
Authorization level:					
Specified—Function 370	11.6	11.6			
Estimated—Function 920	.4	.5			
Total	12.0	12.1			
Estimated outlays:					
Specified—Function 370	7.9	10.4	3.7	1.2	
Estimated—Function 920	.4	10.8	.1		
Total	8.3	.4	3.8	1.2	

In addition, the bill would require additional effort on the part of several agencies, including the Departments of State and Defense, as well as the General Accounting Office and the White House. No funds are specifically authorized in S. 979 for these requirements, which include preparing a variety of analyses, plans and reports, establishing a joint computerized data base and a new National Security Control Agency, and improving certain communication, processing and enforcement procedures. It is expected that these provisions could cost the federal government approximately $2 million to $4 million in each of the fiscal years 1984 and 1985.

Basis of estimate.—For purposes of this estimate, it was assumed that the amounts authorized in the bill would be appropriated prior to the beginning of each fiscal year. In addition, authorizations for pay and other benefit increases were estimated based on the assumptions underlying the First Concurrent Resolution for 1984. Outlays reflect historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: On June 16, 1983, CBO prepared a cost estimate for H.R. 3231, as ordered reported by the House Committee on Foreign Affairs, June 9, 1983. H.R. 3231 amended the Export Administration Act of 1979, and authorized an estimated $126.5 in fiscal year 1984 and $126.3 million in 1985 for export promotion and enforcement.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mary Maginniss.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the rules of the Senate, the Committee has evaluated the regulatory impact of the bill and concludes that it would result in a significant reduction in the regulatory burdens associated with the Export Administration Act of 1979.

One of the primary objectives of the Committee in reviewing the Export Administration Act of 1979 has been to streamline the export control process and thereby reduce its burden on exporters. S. 979 achieves this in several ways:

1. Export license application processing times are reduced by one-third;

2. The foreign availability provisions are strengthened, resulting in fewer items controlled;
3. New multiple licensing provisions are added, permitting several items to be exported under a single license;
4. Trade subject to the multilateral export control system is decontrolled, unless the item is on the militarily critical technologies list and the appropriate authorities consider it necessary that the item be controlled;
5. Spare parts exchanged on a one-for-one basis to replace parts in an item legally exported are subject to less demanding controls; and
6. The use of foreign policy export controls under the Act to violate existing contracts is prohibited.

The Committee recognizes that the provisions of the bill to give the President authority to impose foreign policy import controls, and to control the transfer of goods and technology to embassies and affiliates of foreign governments, will have an effect to increase regulatory burdens, but since these powers are discretionary the exact regulatory effects cannot be determined by the Committee at this time.

The Committee notes that the amendment made by S. 979 to section 10(g) of the Export Administration Act of 1979 does not go beyond arrangements for the review of licenses by the Secretary of Defense that could be made by the Executive Branch under current law, and therefore no changes in regulatory impact by this amendment can be declared by the Committee.

CHANGES IN EXISTING LAW

Pursuant to Section 4 of Rule XXIX of the Standing Rules of the Senate, the Committee notes the following changes to existing law made by S. 979:

EXPORT ADMINISTRATION ACT OF 1979

AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1979".

FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic wellbeing of the United States and the stability of the world economy by increasing employment and production in the United States, and by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation. The restric-

tion of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, which would strengthen the Nation's economy.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

~~(6) Uncertainty of export control policy can curtail the efforts of American business to the detriment of the overall attempt to improve the trade balance of the United States.~~

(6) Uncertainty of export control policy can inhibit the efforts of American business and work to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to achievement of a positive balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(10) The transfer of national security sensitive technology and goods to the Soviet Union and other countries where actions or policies are adverse to the national security interests of the United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities, thereby creating a greater threat to the security of the United States, its allies, and other friendly nations, and increasing the defense budget of the United States.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all

countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments *or common strategic objectives.*

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have

or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make ~~every reasonable effort~~ *reasonable and prompt efforts* to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before ~~resorting to the imposition of controls on exports from the United States~~ *imposing export controls.* No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make ~~every reasonable effort~~ *reasonable prompt efforts* to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before ~~resorting to the imposition of export controls~~ *imposing export controls.*

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments *or common strategic objectives* in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments *or common strategic objectives.*

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(12) It is the policy of the United States to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

(13) It is the policy of the United States to sustain vigorous scientific enterprise. To do so requires protecting the ability of scientists and other scholars freely to communicate their research findings by means of publication, teaching, conferences, and other forms of scholarly exchange.

GENERAL PROVISIONS

SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

~~(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.~~

(2) *Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to the following:*

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods;

(B) A comprehensive operations license, authorizing exports and re-exports of technology and related goods, including items on the list of militarily critical technologies developed pursuant to subsection (d) of this section, from a domestic concern to and among its subsidiaries, affiliates, or other approved consignees that have long-term, contractually defined relations with the exporter. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's system of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Commissioner of Customs, in cooperation with the Secretary periodically, but not less frequently than annually, shall perform audits of these licensing procedures to assure their integrity and effectiveness.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) ~~Commodity~~ Control List.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the ~~"commodity~~ control list" ~~consisting of any goods or technology subject to export controls under this Act.~~ *stating license requirements for exports of goods and technologies to all destinations to which such exports are controlled under this Act.*

(c) Foreign Availability.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in ~~significant~~ *comparable* quantities and comparable in quality to those produced in the United States, *so as to render the controls ineffective in achieving their purposes*, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. *The Secretary and the Secretary of Defense shall cooperate in the gathering and assessment of information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.*

(d) Right of Export.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

~~(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS. The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of the business sector in order to obtain their views on export control policy and the foreign availability of goods and technology.~~

(f) NOTIFICATION OF THE PUBLIC: CONSULTATION WITH BUSINESS.—(1) The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or impacted by export controls, on the United States export control policy and the foreign availability of goods and technology.

(2) In carrying out the provisions of this Act, the Secretary shall consult on a continuing basis with the advisory committees established under section 135 of the Trade Act of 1974.

NATIONAL SECURITY CONTROLS

SEC. 5. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. *This authority includes the power to prohibit or curtail reexports of such goods and technologies and the transfer of goods or technologies within the United States to embassies and affiliates of countries to which exports of these goods or technologies are controlled.* The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2) ~~(A)~~ Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the *Federal Register* a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

~~(B) Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of~~

~~the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.~~

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States. ~~Such regulations shall not be based upon the assumption that such effective safeguards can be devised.~~

(b) Policy Toward Individual Countries.—In administering export controls for national security purposes under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as *whether its policies are adverse to the national security interests of the United States*, the country's present and potential relationship to the United States, its present and potential relationship to countries friedly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President ocnsiders appropriate. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence.

(c) Control List.—(1) The Secretary shall establish and maintain, as part of the ~~commodity~~ control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

~~(3) The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every 3 years in the case of control maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Govern-~~

~~ment agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulations shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States or any of its territories or possessions, of goods and technology comparable to those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendation received from any agency.~~

(3) The Secretary shall review the list established pursuant to this subsection at least once each year in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. The Secretary shall publish notice of each annual review in the Federal Register before he begins such review, provide opportunity for comment and submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties during such review, and publish any revisions in the list, with an explanation of the reasons therefor, in the Federal Register. The Secretary shall further assess, as part of such review, the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled under this section.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment, ~~and~~

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, *and*

(D) goods (i) which would extend, complete, maintain, or modernize a process line employed in the application of a militarily critical technology, or (ii) the analysis of which would reveal or give insight into a United States military system and would thereby facilitate either the design and manufacture of that system or the development of countermeasures against that system, which are not possessed by *or available in fact from sources outside the United States to countries* to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than ~~October 1, 1980~~. January 1, 1985.

(5) ~~The~~ *Items on the* list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the ~~commodity~~ control list, subject to the provisions of subsection (c) *and subsection (f)* of this section.

(6) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this ~~subsection~~ *section.*

(7) *The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls over the products of that technology and equipment.*

(e) Export Licenses.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license *the multiple validated export licenses described in section 4(a)(2) of this Act* in lieu of a validated license.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

~~(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.~~

~~(4) Not later than July 1, 1980, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.~~

(3) The Secretary shall require only a general license in lieu of a multiple or individual validated license under this section for the export of goods or technology to countries party to a multilateral agreement, formal or informal, to which the United States is a party, or to countries party to a comparable bilateral agreement with the United States, if the export of such goods or technology is restricted pursuant to such multilateral or bilateral agreement, unless the goods or technology are included on the list of militarily critical technologies developed pursuant to subsection (d) of this section, in which case the Secretary may require a multiple or individual validated license.

(4) The Secretary, subject to the provisions of subsection (1), shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a commodity that has been lawfully exported from the United States.

(5) The Secretary shall periodically review the various special licensing procedures, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility.

(f) FOREIGN AVAILABILITY.—(1) The Secretary, in consultation with *the Secretary of Defense and other* appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to such destinations from such sources in ~~sufficient~~ *comparable* quantity and of ~~sufficient~~ *comparable* quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement or its basis, and the estimated economic impact of the decision.

(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral

export controls, in ~~sufficient~~ *comparable* quantity and of ~~sufficient~~ *comparable* quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

~~(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with respect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.~~

(3) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on his own initiative or upon receipt of an allegation that such availability exists from an export license applicant. The Secretary shall accept the applicant's representations made in writing and supported by evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. Determination of foreign availability by the Secretary may include but not be limited to consideration of the following factors: cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, technical data packages, backup packages, durability, quality of end products produced by the item proposed for export, and scale of production.

(4) In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall ~~take steps to initiate~~ *actively pursue* negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to countries to which exports are controlled under this section and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(5) In order to further carry out the policies set forth in this Act, the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.

(6) Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of Export Administration concerning foreign availability of goods and technology subject to export

controls under this Act, and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

(7) The Secretary shall make a foreign availability determination under paragraph (1) upon the request of the appropriate technical advisory committee established by subsection (h)(1) of this section. The Secretary shall treat the representations of the technical advisory committee in the manner provided in paragraph (3).

~~(g) INDEXING. In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objections, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.~~

(g) INDEXING.—In order to ensure that requirements for validated licenses and multiple export licenses are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology the anticipated needs of the military of countries to which exports are controlled for national security purposes. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(h) TECHNICAL ADVISORY COMMITTEE.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilizations of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, *the intelligence community*, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, ~~and~~ (D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls., *and (E) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act.* Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

~~(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that requiring a validated license for the export of~~

~~such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigation such availability, and if such availability is verified, the Secretary shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.~~

(i) MULTILATERAL EXPORT CONTROLS.—The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

~~(3) Agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.~~

~~(4)~~(3) Agreement on more effective procedures for enforcing the export controls agreed to ~~pursuant to paragraph (3)~~ *by the members of the Committee.*

(4) Agreement to accord the current multilateral agreement treaty status.

(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for COCOM, and improve the structure and functions of the COCOM Secretariat by upgrading professional staff, translation services, data base maintenance, communications and facilities.

(6) Agreement to strengthen COCOM so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the mutual benefit of all.

~~(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which, for commercial purposes, enters into any agreement with any agency of the government of a country to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling for the encouragement of technical cooperation and is intended~~

~~to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency to the Secretary.~~

~~(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.~~

(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.— (1) Any United States firm, enterprise, or other non-governmental entity which enters into any agreement with any agency of the government of a country to which exports are restricted for national security purposes, which calls for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency with sufficient detail to the Secretary.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions, except where the unpublished technical data involve a technology identified by the Secretary of Defense as a militarily critical technology.

(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, *including those countries not participating in the group known as the Coordinating Committee*, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. *In cases where such negotiations produce agreement on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated.*

~~(l) DIVERSION TO MILITARY USE OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence that goods or technology, which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes, have been diverted to significant military use in violation of the conditions of an export license, the Secretary for as long as that diversion to significant military use continues—~~

> ~~(A) shall deny all further exports to the party responsible for that diversion of any goods or technology subject to national security controls under this section which contribute to that particular military use, regardless of whether such goods or technology are available to that country from sources outside the United States; and~~
>
> ~~(B) may take such additional steps under this Act with respect to the party referred to in subparagraph (A) as are feasible to deter the further military use of the previously exported goods or technology.~~

~~(2) As used in this subsection, the terms "diversion to significant military use" means the use of United States goods or technology to design or produce any item on the United States Munitions List.~~

(l) Diversion to Military Use of Controlled Goods or Technology.—(1) Whenever there is reliable evidence that goods or technology which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

(A) shall deny all further exports to or by the party or parties who divert or conspire to divert any goods or technology subject to national security controls under this section to an unauthorized use or consignee regardless of whether such goods or technology are available to that country from sources outside the United States; and

(B) may take such additional steps under this Act with respect to the party or parties referred to in subparagraph (A) as he determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

(2) As used in this subsection, the term "diversion to an unauthorized use or consignee" means the use of United States goods or technology to design or produce or maintain or contribute to the design, production, or maintenance of any item on the United States Munitions List, or the transfer of United States goods or technology to any consignee or end user engaged in or contributing to such design, production, or maintenance, or the military use of any item on the COCOM list.

(m) Security Measures.—The Commissioner of Customs, in consultation with the Secretary and the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to controls under this section to develop security systems to prevent violations or evasion of controls imposed under this section.

(n) Recordkeeping.—The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application or revision of a list of controlled commodities, goods, or technologies, shall make and keep records of their respective advice, recommendations, or decisions, including the factual and analytical basis of the advice, recommendations, or decisions.

(o) National Security Control Agency.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there shall be established within the office of the Under Secretary of Defense for Policy a National Security Control Agency. The Secretary of Defense may delegate such of those authorities and responsibilities, together with such ancillary functions, as he may deem appropriate to the Agency.

(p) Exclusion for Agricultural Commodities.—This section does not authorize export controls on agricultural commodities, including fats and oils or animal hides and skins.

FOREIGN POLICY CONTROLS

Sec. 6. (a) Authority.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), or (8) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. *Whenever the authority conferred by this section is exercised with respect to a country, the President is also authorized to impose controls on imports from that country to the United States.* The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary. *The President may not, under this section, prohibit or curtail the export or re-export of goods, technology, or other information in performance of a contract or agreement entered into before the date on which the President notifies Congress of his intention to impose controls pursuant to subsection* (e) *of this section on the export or reexport of such goods, technology, or other information to the intended destination or under any validated license or other authorization issued under this Act.*

(2) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or ~~one year~~ *six months* after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (e). Any such extension and any subsequent extension shall not be for a period of more than ~~one year.~~ *six months.*

(3) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(4) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

~~(b) CRITERIA. When imposing, expanding, or extending export controls under this section, the President shall consider—~~

~~(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;~~

~~(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;~~

~~(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;~~

~~(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;~~

~~(5) the ability of the United States to enforce the proposed controls effectively; and~~

~~(6) the foreign policy consequences of not imposing controls.~~

(b) CRITERIA.—The President may impose, expand, or extend export controls under this section only if he determines that—

(1) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

(2) such controls are compatible with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) the reaction of other countries to the imposition or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or counterproductive to United States foreign policy interests;

(4) such controls will not have an extraterritorial effect on countries friendly to the United States adverse to overall United States foreign policy interests;

(5) the cost of such controls to the export performance of the United States, to the competitive position of the United States in the international economy, to the international reputation of the United States as a supplier of goods and technology, and to individual United States companies and their employees and communities, taking into account the effects of the controls on existing contracts, does not exceed the benefit to United States foreign policy objectives; and

(6) the United States has the ability to enforce the proposed controls effectively.

~~(c) CONSULTATION WITH INDUSTRY. The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.~~

(c) CONSULTATION WITH INDUSTRY.—The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any control under this section. Such consultation and advice shall be with respect to the criteria set forth in paragraphs (1) through (6) of subsection (b) and such other matters as the Secretary considers appropriate.

(d) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

~~(e) NOTIFICATION TO CONGRESS.—The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 7(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit width such notification a report specifying—~~

~~(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and~~

~~(2) the nature and results of any alternative means attempted under subsection (d), or the reason for imposing, extending, or expanding the control without attempting any such alternative means.~~

~~Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.~~

(e) NOTIFICATION OF CONGRESS.—(1) The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section (7g)(3) of this Act, the President shall not impose, expand, or extend such controls until he has transmitted to the Congress a report specifying—

(A) the purpose of the controls;

(B) the determinations of the President with respect to each of the criteria set forth in subsection (b) and the bases for such determinations;

(C) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means; and

(D) whether the President is also exercising the authority to control imports as authorized by subsection (a), and if the President is not exercising such authority, an explanation of the reasons therefor.

(2) Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act. Such report shall at the same time it is submitted to the Congress also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.

(3) In the case of an extension of controls occuring at a 12-month interval after the initial imposition or expansion of controls, such report shall be submitted in writing. In the case of an extension of controls at a 6-month interval following the submission of a written report,

such report need not be in writing but shall be presented by the Secretary in testimony before the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Foreign Affairs.

(f) Exclusion for Medicine and Medical Supplies and for Certain Food Exports.—This section does not authorize export controls on medicine or medical supplies, *or on donations of items intended to meet basic human needs such as food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies.* Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. ~~This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act or to any export control on food which is in effect on the date of the enactment of the Export Administration Amendments Act of 1981.~~ *This subsection shall not apply to any export control on medicine or medical supplies or food, except for donations of such items as those listed in the first sentence of this subsection, which is in effect on the date of enactment of the Export Administration Act Amendments of 1983.*

(g) Foreign Availability.—(*1*) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(2) Prior to any extension of controls pursuant to paragraph (2) of subsection (a), the President shall evaluate the results of his actions

under paragraph (1) of this subsection and shall include the results of that evaluation in his notification to Congress pursuant to subsection (e).

(3) In the event that the President's efforts under paragraph (1) are not successful in securing such cooperation during a 6-month period when controls imposed under this section are in effect, in the subsequent 6-month period, if such controls are extended, the Secretary shall take into account the foreign availability of goods or technology subject to controls. If the Secretary affirmatively determines that a good or technology is available in comparable quantity and comparable quality from sources outside the United States to countries subject to such controls so that denial of the license would be ineffective in achieving the purposes of the controls, then the Secretary shall issue a license for the export of such goods or technology during the period of such foreign availability. The Secretary shall remove such goods or technology from the list established pursuant to subsection (k) if he determines such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection the Secretary shall follow the procedures specified in section 5(f)(3) of this Act.

(h) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (f), and (g) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(i) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

(1) Such country has repeatedly provided support for acts of international terrorism.

(2) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(j) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(k) CONTROL LIST.—The Secretary shall establish and maintain, as part of the ~~commodity~~ control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. ~~Such goods or technology shall be clearly identified as subject to controls under this section.~~ *The Secretary shall clearly identify on the control list which goods and technical data and countries or destinations are subject to which types of controls under this section.* Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

SHORT SUPPLY CONTROLS

SEC. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinry, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) Petitions for Monitoring or Controls.—(1) (A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may transmit a written petition to the Secretary requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating (i) that there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply, and (ii) that there has been a significant increase in the price of such material or a domestic shortage of such material under circumstances indicating the price increase or domestic shortage may be related to exports.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall (A) include the name of the material which is the subject of the petition, (B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States, (C) indicate whether the petition is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and (D) provide that interested persons shall have a period of 30 days commencing with the date of publication of such notice to submit to the Secretary written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved. At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the peti-

tion, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall—

(A) determine whether to impose monitoring or controls, or both, on the export of such material, in order to carry out the policy set forth in section 3(2)(C) of this Act; and

(B) publish in the Federal Register a detailed statement of the reasons for such determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days following the publication of such proposed regulations, and after considering any public comments thereon, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses thereto, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls on a temporary basis after a petition is filed under paragraph (1)(A) but before the Secretary makes a determination under paragraph (3) if the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) Domestically Produced Crude Oil.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline

Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, unless the requirements of paragraph (2) of this subsection are met.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President makes and publishes express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition cost such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President reports such findings to the Congress and the Congress, within 60 days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) REFINED PETROLEUM PRODUCTS.—(1) No refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) AGRICULTURAL COMMODITIES.—(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space avail-

able for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3) If the authority conferred by this section or section 6 is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs may be exported from the United States.

(2) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize hardship to the producers of western red cedar and to further the foreign policy of the United States.

(3) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(4) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber without wane;

(B) chips, pulp and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

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~~(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or~~

~~(E) shakes and shingles.~~

~~(j) EXPORT OF HORSES.—(1) Notwithstanding any other provision of this Act no horse may be exported by sea from the United States, or any of its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.~~

~~(2) The Secretary, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.~~

FOREIGN BOYCOTTS

SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the pplication of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2) (C) and (2) (F) shall not provide exceptions from paragraphs (1) (B) and (1) (C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) FOREIGN POLICY CONTROLS.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS

Sec. 10. (a) Primary Responsibility of the Secretary.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) Initial Screening.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) Action on Certain Applications.—In each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within ~~90~~ *60* days after a properly completed application has been submitted pursuant to this section.

(d) Referral to Other Departments and Agencies.—In each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within ~~30~~ *20* days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

(e) Action by Other Departments and Agencies.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within ~~30~~ 20 days after its receipt of the application, the information or recommendations requested with respect to such application. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2) If the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional ~~30~~ *20* day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) Action by the Secretary.—(1) Within ~~90~~ *60* days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the ~~90-~~ *60*-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations.

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant of the specific questions raised and any such negative considerations or recommendations, and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act which would be furthered by denial, *what if any modifications in or*

restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this Act, and which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor.

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—~~(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.~~ *(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology, whether by single or by multiple license, to any country to which exports are controlled for national security purposes, or where the Secretary of Defense, in consultation with the Secretary, determines that there is a clear risk of diversion of militarily critical goods or technology to proscribed destinations. Whenever the Secretary of Defense determines that the export of any such goods of technology will prove detrimental to the national security of the United States by making a significant contribution to the military potential of any such country, or constituting a clear risk of diversion to a proscribed destination of militarily critical goods or technology, the Secretary of Defense shall recommend to the President that such export be disapproved.*

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). *If the Secretary and the Secretary of Defense are unable to concur on the types and categories of transactions or on any proposed export of goods or technology which should be referred to the Secretary of Defense for review, the matter shall be referred to the President for resolution.* Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, *or where there is a clear risk of diversion of militarily critical goods or technology to proscribed destina-*

tions, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than ~~30~~ *20* days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.

(h) Multilateral Control.—In any case in which an application which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within ~~60~~ *40* days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such ~~60~~- *40*-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every ~~60-~~ *40*-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) Records.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) Appeal and Court Action.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within ~~30~~ *20* days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

VIOLATIONS

Sec. 11. (a) In General.—Except as provided in subsection (b) of this section, whoever knowingly violates *or conspires to or attempts to violate* any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful Violations.—(1) Whoever willfully *violates or conspires to or attempts to violate* ~~exports anything contrary to~~ any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of *or that the destination or intended destination of the goods or technology involved is* any country to which exports are ~~restricted~~ *con-*

trolled for national security or foreign policy purposes—(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and (B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both. *For purposes of this subsection, a country to which exports are controlled for national security purposes is one identified pursuant to the determinations made in accordance with section 5(b) of this Act.*

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and (B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years or both. For purposes of this paragraph, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(3) Whoever possesses any goods or technology with the intent to export them contrary to this Act or any regulation, order, or license issued thereunder shall be subject to the penalties as provided in subsection 11(a), except for a national security violation which would be subject to the penalties as provided in subsection 11(b)(1).

(4) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—The ~~head of any department or agency exercising any function under this Act, or any officer or employee of such department or agency specifically designated by the head thereof~~ *Commissioner of the United States Customs Service of the Department of the Treasury (and officers or employees of the Service specifically designated by the Commissioner)*, may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

(3) In addition to any other authority under this Act, the Secretary may revoke or suspend the authority to export of any person convicted of a violation of any other provision of Federal law arising out of the export of goods or technology prohibited by or under this Act.

(4) Whoever violates any national security control imposed under section 5 of this Act, or any regulations, order, or license related thereto, or any regulation issued pursuant to a multilateral agreement to control exports for national security purposes, to which the United States is a party, may be subject to such controls on the importing of goods or technology into the United States or territories and possessions as the President may prescribe.

(d) Payment of Penalties.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probaion are not fulfilled.

(e) Refunds.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) *or any amounts realized from the forfeiture of property interest or proceeds forfeited pursuant to subsection (g)* shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty *imposed pursuant to subsection (c)* within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346 (a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) Actions for Recovery of Penalties.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. ~~In any such action, the court shall determine de novo all issues necessary to the establishment of liability.~~ Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Forfeiture of Property Interest and Proceeds.—

(1) Whoever has been convicted of a national security export control violation under subsection (a) or (b) shall, in addition to any other penalty, forfeit to the United States—

(A) any of his interest in, security of, claim against, or property or contractual rights of any kind in the goods or technology that were the subject of the violation;

(B) any of his interest in, security of, claim against, or property or contractual rights of any kind in property that was used to facilitate commission of the violation; and

(C) any of his property constituting, or derived from, any proceeds obtained directly or indirectly as a result of such violations.

(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of title 18, United States Code.

(h) PRIOR CONVICTIONS.—No person convicted of a violation of section 793, 794, or 798 of title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778), shall be eligible at the discretion of the Secretary, to apply for or use any export license for a period for up to ten years from the date of conviction. Any outstanding export license in which such person has an interest may be revoked at the discretion of the Secretary at the time of conviction.

~~(g)~~*(i)* OTHER AUTHORITIES.—Nothing in subsection (c), (d), ~~(or)~~ (f), *(g), or (h)* limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 12. (a) GENERAL AUTHORITY.—*(1)* To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the ~~head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof)~~ *Commissioner of the United States Customs Service of the Department of the Treasury (and officers or employees of the Service specifically designated by the Commissioner)* may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, ~~the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and~~

a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) An officer of the United States Customs Service of the Department of the Treasury or other person authorized to board or search vessels who has reasonable cause to suspect that any goods or technology have been or will be exported from the United States in violation of any Act governing exports may—

(A) stop, search, and examine, within or without his district, a vehicle, vessel, aircraft, or person, on which or whom he has reasonable cause to suspect there are any such goods or technology, whether by the person in possession or charge or by, in, or upon such vehicle, vessel, aircraft, or otherwise;

(B) search, wherever found, any package or container in which he has reasonable cause to suspect there are any such goods or technology;

(C) seize and secure for trial any such goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container.

(3)(A) An officer of the United States Customs Service of the Department of the Treasury or other person authorized to board or search vessels may, while in the performance of, and in connection with, official duties, make arrests without warrant in the enforcement of the provisions of any Act governing exports. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws.

(B) If such officer or person has reasonable cause to suspect that any goods or technology have or would have been exported from the United States in violation of any Act governing exports, the officer or person shall refer such matter to the Secretary of the Treasury, or his designee, or the Attorney General for civil or criminal action, respectively, in accordance with this section.

(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information obtained at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Departments or agencies which obtain information which is relevant to the enforcement of this Act, *including information pertaining to subjects of ongoing investigations*, shall furnish such information to the ~~department or agency with enforcement responsibilities under this Act~~ *United States Customs Service of the Department of the Treasury (and officers or employees of the Service specifically designated by the Commissioner)* to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section. *The Secretary shall consult on a continuing basis with the Attorney General, the Commissioner of Customs, and the heads of other departments and agencies which obtain information subject to this paragraph to facilitate the sharing of such information.*

(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2), the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

ANNUAL *AND QUARTERLY* REPORT

SEC. 14. (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry out section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence

demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(5);

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7;

(13) the information contained in the reports required by secto 7(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an analysis of the time required to process license applications, the number and disposition of export license applications taking more than 90 days to process, and an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act;

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, or the basis of the review required by section 12(e), to simplify regulations issued under this Act;

(19) violations under section 11 and enforcement activities under section 12; and

(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

(b) Report on Certain Export Controls.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose. such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) Report on Negotiations.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

(d) Foreign Availability Report.—The Secretary and the Secretary and the Secretary of Defense shall jointly prepare and transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives quarterly reports on the operation and improvement of the Government's ability to assess foreign availability, including but not limited to training of personnel, use of computers, and utilization of Foreign Commercial Service Officers.

ADMINISTRATIVE AND REGULATORY AUTHORITY

Sec. 15. *(a) The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary of Commerce under this Act which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration prior to the effective date of the Export Administration Act Amendments of 1983 and such other functions as the Secretary may prescribe.*

(b) ~~(a)~~ The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b), may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.

DEFINITIONS

Sec. 16. As used in this Act—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term "good" means any article, *natural or manmade substance*, material, supply or manufactured products, including inspection and test equipment, and excluding technical data;

~~(4) the term "technology" means the information and know-how that can be used to design, produce, manufacture, utilize, or reconstruct goods including computer software and technical data, but not the goods themselves; and~~

(4) the term "technology" means technological or technical data, and shall include information or know-how of any kind that can be used or adapted for use in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or restoration of goods or commodities,

including computer software. Information or know-how may take tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or take an intangible form, such as training or technical services. Technological data shall also include all goods or commodities that will be used in the industrial application of the technological information, regardless of the end-use classification of the goods or commodities;

(5) the term "export of goods" means—

(A) an actual shipment or transmission of goods out of the United States, or

(B) an actual shipment or transmission of goods, or portions thereof, originally exported from the United States to any destination other than that indicated to the appropriate United States authority as the initial destination of the goods at the time of the original export from the United States;

(6) the term "export of technology" means—

(A) an actual shipment or transmission of technology out of the United States; or

(B) any release of technology of United States origin in a foreign country;

(7) the term "United States" means the States of the United States, its commonwealths, territories, dependencies, and the District of Columbia;

(8) ~~(5)~~ the term "Secretary" means the Secretary of Commerce.

EFFECT ON OTHER ACTS

Sec. 17. (a) In General.—Nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) Coordination of Controls.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) Civil Aircraft Equipment.—Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act. For purposes of this subsection, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(d) Nonproliferation Controls.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to

such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

AUTHORIZATION OF APPROPRIATIONS

SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act unless previously and specifically authorized by law.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

~~(1) $8,000,000 for each of the fiscal years 1980 and 1981, of which $1,250,000 shall be available for each such fiscal year only for purposes of carrying out foreign availability assessments pursuant to section 5(f)(5), and~~

(1) $11,610,000 for each of the fiscal years 1984 and 1985, *and*

(2) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

SEC. 19. (a) EFFECTIVE DATE.—The Act shall take effect upon the expiration of the Export Administration Act of 1969.

(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued to take effect not later than January 1, 1980.

TERMINATION DATE

SEC. 20. The authority granted by this Act terminates on September 30, ~~1983~~ *1989*, or upon any prior date which the President by proclamation may designate.

SAVINGS PROVISIONS

SEC. 21. (a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

SEC. 22. (a) Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out "sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969" and inserting in lieu thereof "subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act".

(b)(1) Section 103(c) of the Energy Policy and Conservation Act (42 U.S.C. 6212(c)) is amended—

(A) by striking out "1969" and inserting in lieu thereof "1979"; and

(B) by striking out "(A)" and inserting in lieu thereof "(C)".

(2) Section 254(e)(3) of such Act (42 U.S.C. 6274(e)(3)) is amended by striking out "section 7 of the Export Administration Act of 1969" and inserting in lieu thereof "section 12 of the Export Administration Act of 1979".

(c) Section 993(c)(2)(D) of the Internal Revenue Code of 1954 (26 U.S.C. 933(c)(2)(D)) is amended—

(1) by striking out "4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))" and inserting in lieu thereof "7(a) of the Export Administration Act of 1979"; and

(2) by striking out "(A)" and inserting in lieu thereof "(C)".

INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

SEC. 23. (a) Section 9 of the International Investment Survey Act of 1976 (22 U.S.C. 3108) is amended to read as follows:

AUTHORIZATIONS

"SEC. 9. To carry out this Act, there are authorized to be appropriated $4,400,000 for the fiscal year ending September 30, 1980, and $4,500,000 for the fiscal year ending September 30, 1981.".

(b) The amendment made by subsection (a) shall take effect on October 1, 1979.

MISCELLANEOUS

SEC. 24. Section 402 of the Agricultural Trade Development and Assistance Act of 1954 is amended by inserting "or beer" in the second sentence immediately after "wine".

OFFICE OF STRATEGIC TRADE

SEC. 25. The President shall submit to the Congress, not later than March 15, 1984, a proposal to create an Office of Strategic Trade. In developing his proposal, the President shall take into account, among other things, the need for better coordination of export licensing responsibilities and procedures, improved enforcement of this Act and other laws that provide authority to impose controls on exports, representation of the United States in the Coordinating Committee for

Multilateral Export Controls (COCOM), through monitoring and analysis of data relating to technology and technology transfer, evaluation of technological changes that are relevant to the export licensing process, and more effective liaison with the business community and others affected by the export licensing process.

AMENDMENTS TO OTHER LAWS

(1) 5 U.S.C. 5314 is amended by inserting "Under Secretary of Commerce for Export Administration" before "and Under".

(2) Sec. 203(a)(1) of the International Emergency Economic Powers Act (50 U.S.C. 1202) is amended—

(a) by striking "and" at the end of paragraph (A);

(b) by inserting "and" at the end of paragraph (B); and

(c) by adding the following new paragraph:

"(C) impose controls on exports of goods or technology from United States companies, or their subsidiaries or licensees operating outside the United States;".

(3) Clause (viii) of section 201(e)(1)(E) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)(E)) is amended by inserting "fishery" before "matters".

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